

**CITY OF NEWTON
PURCHASING DEPARTMENT**

***CONTRACT FOR THE
NEWTON COMMONWEALTH FOUNDATION***

**REQUEST FOR PROPOSAL
OPERATION OF
NEWTON COMMONWEALTH GOLF COURSE
*REQUEST FOR PROPOSAL #15-15***

**Pre-Proposal Meeting: September 11, 2014 at 1:30 p.m.
Proposal Submittal Date: September 25, 2014 at 10:30 a.m.**

**AUGUST 2014
Setti D. Warren, Mayor**

CITY OF NEWTON
PURCHASING DEPARTMENT
City Hall, 1000 Commonwealth Avenue
Newton, Massachusetts 02459

**Notice of Request For Proposal
RFP #15-15**

**TO PROVIDE PROFESSIONAL SERVICES:
OPERATION OF THE NEWTON COMMONWEALTH GOLF COURSE**

(Faxed Proposals Shall Not Be Accepted By The City of Newton)

Date: August 28, 2014

The City of Newton is soliciting proposals for the operation in accordance with Exhibit IV hereto of the Newton Commonwealth Golf Course by a private operator under a three year contract, **beginning January 1, 2015 through December 31, 2018**. The major components of the desired services include management, maintenance, and operation of the Golf Course as a public course in accordance with a formal management agreement.

Proposal documents containing definitions of required services, evaluation criteria, and other pertinent information may be obtained on the City's website at www.newtonma.gov/bids or at the Purchasing Department, Room 204, City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts 02459, at **10:00 a.m., Thursday, August 28, 2014**.

A pre-proposal conference and site visit is scheduled on **September 11, 2014 at 1:30 p.m.** Interested parties will meet at the clubhouse of the Newton Commonwealth Golf Course, 212 Kenrick St. Newton, MA. The pre-proposal meeting is **not** mandatory.

This proposal has been issued by the authority granted the City by Massachusetts General Law, Chapter 30B, Uniform Procurement Act, Section 6. Proposers should familiarize themselves with the provisions of this Act.

Proposals must be submitted in separate sealed envelopes, one containing **four (4) copies** of the non-price technical proposal marked "**RFP #15-15 - Technical Proposal - Golf Course Operation Services**" and one envelope containing **one (1) copy** of the price proposal marked "**RFP #15-15 - Price Proposal - Golf Course Operation Services**" shall be submitted. The name of the proposer shall be included on both envelopes. Both envelopes must be received: Nicholas Read, *Chief Procurement Officer*, City of Newton, Second Floor, City Hall Room 204, 1000 Commonwealth Avenue, Newton, Massachusetts, 02459, prior to **10:30 a.m., September 25, 2014**.

A proposal deposit of five thousand dollars (\$5,000) must be submitted with the proposal.

IMPORTANT

Each respondent to this RFP must ensure that in their Technical Proposal they acknowledge they have received any and all Addenda for this RFP (see Attachment B).

The Chief Procurement Officer has determined that in order to select the most advantageous offer to operate the Newton Commonwealth Golf Course, evaluation criteria set forth in this request for proposals must be considered in addition to price. It is essential that the City of Newton retain the services of a management firm with adequate background to operate the Newton Commonwealth Golf Course so that the residents of Newton will be assured they will be provided a golf facility that is professionally managed and expertly maintained. Therefore, the RFP process will enable the City to provide higher ratings to management firms whose experience in public golf course operation and whose key personnel have more than the minimally adequate number of years of experience in the operation of public golf courses.

The successful proposer must demonstrate the ability to deliver services that adhere to the specifications outlined in this document, and provide references as to where similar services have been successfully provided. The contract will be awarded to the responsive and responsible proposer submitting the most advantageous proposal taking into consideration both the results of the comparative evaluation and price. The City of Newton reserves the right to reject any and all proposals as determined to be in the best interests of the City.

A handwritten signature in black ink, reading "Nicholas Read". The signature is fluid and cursive, with the first name "Nicholas" and last name "Read" clearly distinguishable.

Nicholas Read
Chief Procurement Officer

August 28, 2014

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I. PURPOSE

On behalf of the City of Newton and the Newton Commonwealth Foundation, Inc., a Massachusetts charitable corporation organized under Chapter 180 of the Massachusetts General Laws ("Foundation"), members of which are appointed by the Mayor of the City of Newton, the City's Chief Procurement Officer (CPO) is soliciting the services of interested and qualified golf course operators to manage and maintain in accordance with Exhibit IV hereto the Newton Commonwealth Golf Course at no cost to the City or the Foundation. The services to be provided are managing, maintaining, and operating the Golf Course as a public course in accordance with a formal management agreement.

II. SCHEDULE

Key Dates for This Proposal:

August 28, 2014 @ 10:00 a.m. - RFP Issued

September 11, 2014 @ 1:30 p.m. - Pre-Proposal Meeting (212 Kenrick St., Newton, MA)

September 19, 2014 @ 12:00 noon – Time Limit for Questions or Clarifications Regarding

September 25, 2014 @ 10:30 a.m. - Proposal due date

III. BACKGROUND

In 1981, 25 abutting land owners and citizens of the City purchased the golf course previously known as the Chestnut Hill Country Club, and donated it to the City for operation as a public golf course. The Foundation operates the Golf Course under a license agreement between the Foundation and the City, a current copy of which (unsigned) is attached hereto as Exhibit I. On January 1, 1981, the Foundation entered into a management agreement with Newton Commonwealth Golf, Inc., Kenneth Campbell, President. Since January 1, 1993, the Golf Course has been managed by Sterling Golf Management, Inc., Kevin Osgood, President See Exhibit II. The original Golf Course was opened in 1897 and redesigned in 1921-22 by Donald Ross, who also was a member of the Country Club. Mr. Ross' work is still evident on holes not affected by the redesign that took place in 1952 when land was taken for a residential development. The course now occupies 78 acres, plays to par 70, and measures 5336 yards from the back tees. A new Toro Irrigation System was installed in 2007.

IV. CURRENT SITUATION

The Golf Course is currently being operated by Sterling Golf Management, Inc., Inc., Kevin Osgood, President, under a management agreement with Foundation /Golf Course Management Committee dated March 5, 2009. This agreement is due to expire on December 31, 2014. The operator reported unaudited the following gross revenues for 2013: greens fees: \$846,394; season tickets: \$79,575; cart rentals: \$212,241; and snack bar: \$110,117. Approximately 37,795 rounds of golf were played in 2013. This number includes all 18 hole, 9 hole and twilight rounds.

V. DECISION TO USE RFP PROCESS

It is essential that the City retain the services of a management firm with extensive background to operate the Golf Course so that the residents of Newton will be assured they will be provided a golf facility that is professionally managed and expertly maintained. Since which management company will be most advantageous will be based on factors other than price, the City has elected to use a Request For Proposal (RFP) process. Under the RFP procurement, a proposer's response to the RFP consists of two parts: everything responsive to the RFP other than price, called the Technical Proposal, and the Price Proposal. After the proposals have been opened, the proposers' Technical Proposals will be evaluated and ranked. The

evaluation results will be delivered to the CPO, who will open the Price Proposals and make recommendation to the Foundation as to which proposer is the most advantageous, taking into consideration the Technical and Price Proposals.

The Foundation will not be bound by the CPO's recommendation. The policy of the Foundation is to continually improve the quality of golf being offered at an affordable price to its customers. Therefore, in order to achieve this policy, the Foundation will award a contract, if at all, to the proposer the Foundation determines to best fulfill this policy.

VI. INSTRUCTIONS TO BIDDERS

1. **Issuing Office.** This RFP is issued by the City on behalf of the Foundation.

Inquiries involving procedural or technical matters must be received prior to September 19, 2014 at 12:00 noon and directed in writing to:

Nicholas Read, *Chief Procurement Officer*
Purchasing Department
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459
(617) 796-1220
(617) 796-1227
purchasing@newtonma.gov

2. **Notice of Pre-Proposal Conference.** A conference for prospective proposers will be held at **1:30 p.m., September 11, 2014** at the Golf Course, 212 Kenrick St., Newton, MA. The pre-proposal conference is not mandatory.

At that time, prospective proposers can discuss with representatives of the Foundation and the City any questions or concerns they might have regarding the project.

Subsequent to this meeting, if necessary, an Addendum will be issued in order to clarify any questions that may arise as a result of the conference.

3. **Proposal Deposit.** Each Technical Proposal must be accompanied by either a certified check payable to the "Newton Commonwealth Foundation, Inc.", or a bid bond from an authorized surety company authorized to do business in the Commonwealth of Massachusetts, in the amount of **\$5,000**. All deposits shall be returned upon final execution of a contract or, if no contract is executed, at the expiration of ninety (90) calendar days from the date set for opening of the proposals. If the successful proposer fails to perform its agreement to furnish a properly executed contract, including the required security for performance within ten (10) days after an award is made to it, or within such additional time as the Foundation may authorize in writing, the proposal deposit shall become the property of the Foundation as liquidated damages; however, in case of death or disability of the Proposer, the deposit shall be returned to it after submission of a sworn affidavit to, and acceptance by, the Foundation.
4. A responsive proposal shall consist of two parts: (i) a Technical Proposal made up of one (1) original, and four (4) paper copies and (ii) one (1) paper copy of a Price Proposal. A digital DVD copy of the Technical proposal is requested, but not required. The Technical Proposal and the Price Proposal shall be submitted in separate sealed envelopes.

The four copies of the TECHNICAL PROPOSAL and the one PRICE PROPOSAL must be submitted in **SEPARATE SEALED ENVELOPES.**

Envelopes shall be marked:

“TECHNICAL PROPOSAL - RFP #15-15 “OPERATION OF THE NEWTON COMMONWEALTH GOLF COURSE”

AND

“PRICE PROPOSAL - RFP #15-15 “OPERATION OF THE NEWTON COMMONWEALTH GOLF COURSE”

along with your firm’s name on both envelopes. If a Price Proposal is included in the Technical Proposal, the proposal may be rejected.

- A. **Technical Proposal.** The technical proposal shall consist of documentation that the proposer satisfies the minimum criteria set forth in section VII of this RFP #15-15 together with the proposer's response to the evaluative criteria set forth in Section VIII. (See more specifically, Section X Proposal Submission Requirements.). **Addendum(s) must be acknowledged on the first page of the “Technical Proposal”.**
- B. **Price Proposal.** The management contract will be a revenue generating contract wherein the Contractor makes payments to the Foundation in accordance with its proposal. The amount to be paid to the Foundation shall consist of a minimum amount of \$250,000 per year or a percentage of all gross revenues from the operation of the golf course, whichever is greater. There will be two separate percentage bids, one for the gross revenue collected for the operation of the snack bar food service and functions and the other percentage bid will be for all other gross revenues received by the golf course, except revenue from pro shop sales, pull cart and golf club rentals, tournament fees, income earned from professional tournaments, lessons given by the staff, and outside income earned by any golf professional on the staff. Proposers shall use Attachment A to this RFP #15-15 Form of Price Proposal in submitting the price proposal.

For any play during the Off-Season (11/30 to 3/31), the Contractor may retain 100 percent of revenues up to the amount of \$5000.00 in each month. Contractor shall pay to the Foundation fifty percent of revenues over the amount of \$5000.00 in each month.

5. **Proposal Acceptance and Rejection.** Notice of the acceptance of the proposal will be given to the successful proposer by an award letter from the CPO, which shall include the proposed Golf Course Management Agreement (“Agreement”) between the Foundation and the Contractor. The Contractor shall deliver the Agreement, duly signed, and properly executed, within ten (10) calendar days of receipt of the notice of acceptance. If the successful proposer fails to execute the Agreement within such time period, the Foundation may accept another proposal and exercise its right under the bid bond. The failure of any proposer to examine the agreement documents shall not relieve it from the obligations it will incur if its proposal is accepted.

The City and the Foundation reserve the right to reject any or all proposals, or any part(s) thereof, if in the best interest of either to do so, and to amend any contract to the extent permitted by law and as the City or Foundation deems to be in their best interest. The City and the Foundation reserve the right to waive any mistakes or informalities in the proposals received and may request supplementary information from any particular proposer if it is determined that the granting of such waiver or the receipt of such additional information would be in the best interest of the Foundation. Each “Out-of-State” proposer shall furnish with its proposal a certification from the Office of the Secretary of State verifying that it is legally authorized to do business in the Commonwealth of Massachusetts.

Any proposal which fails to include any material information or documentation specified in the proposal submission requirements is non-responsive and will be rejected.

6. **Incorporation of Proposal Content.** All or part of the successful proposal submitted shall become incorporated into the final contract documents.
7. **Expenses.** Expenses for developing the proposals are entirely the responsibility of the proposer and shall not be chargeable in any manner to the City or the Foundation. All costs of meeting the requirements of this RFP and any resulting contracts, including those for insurance, professional services, or licensure, shall likewise be the exclusive responsibility of the proposer and not the City or the Foundation.
8. **Proposer Review of Existing Operation.** The Golf Course can be inspected by contacting:

Steven A. Meyer, Esquire
Prudential Tower
800 Boylston Street
Boston, MA 02199-8004
617.973.6203
smeyer@pbl.com

9. **Contract and Term.** After selection of the successful proposal, a written contract containing the terms of this RFP #15-15 and the successful proposer's response, together with any changes to the service plan negotiated by the parties shall be executed by the successful proposer and the Foundation. Such contract shall not take effect until signed by both parties and approved by the Mayor of the City of Newton. The term of the contract is three years, it shall extend from **January 1, 2015 through December 31, 2018**. The provisions of the contract, except as expressly modified by the provisions of this RFP #15-15 shall also be included in the contract to be executed by the management firm and the Foundation.
10. **Method of Payment.** The Contractor shall be required to remit monies due the Foundation monthly. Monies shall be paid so as to be received by the Foundation on or before the 15th day of the month following the end of the month for which payment is made. Late payments will be subject to interest charged at 1 ½ % per month. At the end of each year of the Agreement, the Contractor shall remit any additional guaranteed amount due as governed by the Agreement.
11. **Insurance Requirements.** During the term of any Agreement, the Contractor shall maintain in full force and effect at its own cost and expense the following minimum insurance coverage:
- A. **Commercial General Liability** insurance with not less than the following limits:
- | | |
|--|-------------|
| General aggregate | \$5,000,000 |
| Products - completed operation aggregate | \$2,000,000 |
| Personal and advertising - injury | \$2,000,000 |
| Each occurrence | \$1,000,000 |
| Fire damage | \$100,000 |
| Medical expense | \$5,000 |
- Coverage provided under the commercial general liability policy shall apply exclusively to the operations provided under the Agreement to be entered into by the successful proposer.
- B. Workers compensation insurance shall be required under the laws of the Commonwealth of Massachusetts.
- C. Automobile insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:
- | | |
|-----------------|--|
| Bodily Injury | \$1,000,000 per person
\$1,000,000 per accident |
| Property damage | \$500,000 per accident |
- D. Fire insurance shall be in an amount equal to the replacement cost of the buildings as determined annually by the Foundation. Currently the clubhouse shall carry \$450,000 coverage and the maintenance building shall carry \$300,000 coverage.
- E. Pesticide liability shall be provided separately, or as a part of the General Liability Coverage, in an amount not less than \$1,000,000.
- F. Underground storage tank liability shall be provided separately, or as part of the General Liability Coverage in an amount not less than \$1,000,000.

The City, the Foundation, and the Contractor shall be named as insured on all policies obtained by the management firm and certificates of insurance shall be furnished to the City and the Foundation by the Contractor.

All policies shall be obtained from companies licensed to conduct business in the Commonwealth of Massachusetts. Companies providing insurance coverage shall be required to have nothing less than an "A" rating or better by the A.M. Best Company of Aldrich, New Jersey.

Insurance coverage in amount and form shall not be deemed acceptable until approved by Newton's City Solicitor. The City and the Foundation reserve the right to require increased insurance coverage if the present statutory cap on tort liability of municipalities is increased during the term of the Agreement.

12. **Utilities.** All utility expenses such as water, sewer, electricity, gas, waste disposal, telephone, cable television service, etc., which are or may be required to operate the golf course, will be borne by the Contractor, including relocation of utilities, permits, connection fees, etc. The golf course has its own water source, connected to its irrigation system. The Contractor will be responsible for any electricity associated with operating the pumps for this system. The irrigation system can also draw on City supplied water when necessary. When using this system, the operator will be required to pay the water and sewer charges to the City.
13. **Taxes.** The Contractor shall be responsible for paying, prior to delinquency, any and all taxes and assessments levied or assessed against the Golf Course in connection with the Golf Course and the management firm's operation thereof. The City charges a Personal Property Tax for all property owned by the Contractor. This tax will cover golf cars, equipment, tables, chairs, etc. and is payable quarterly to the City.
14. **Course Fees and Charges.** Fees for pre-paid green fees, green fees, riding cart rentals, club rentals, and food and beverage must be approved by the Foundation. The 2012 Rate Schedules is attached hereto as Exhibit III.B. The Foundation shall establish all fees for the forthcoming season prior to April 1 for each year of the Agreement. If the Foundation does institute any future fee increases, the Contractor shall be required to pay the Foundation sixty percent (60%) of the increased revenue it collects related to any fee increase.
15. **Records and Audits.** The Contractor shall submit a detailed description of the method to be used to insure the accountability for all revenues generated at the Golf Course, which method is subject to review by the Foundation. The Contractor shall keep the books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Foundation and shall permit inspection of said books and records by the Foundation as often as deemed necessary in the opinion of the Foundation in form submitted by the Foundation. The Contractor shall submit at the end of each year a certified, audited annual report, or as required by the Foundation, a profit and loss statement of operations under the terms of the Agreement, in a form considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Foundation.

16. **Hours and Days of Operation.** The primary operating period shall be daily, daylight to dusk, seven days per week, weather permitting, beginning April 1 and ending November 30, each year of the agreement. The Golf Course may be operated during the months of December through March, provided the use of the Golf Course does not cause damage to the greens, tees, or other turf areas. Changes to the operating schedule can be made only with the written approval of the Foundation.
17. **Sales and Rental Limitations.** The Contractor shall have the exclusive right to sell or rent golf or golf related equipment.
18. **Maintenance.** The Contractor will accept all properties, facilities, and equipment "as is" in their presently existing condition. The Contractor shall, at its own expense, make all repairs necessary to maintain City-owned equipment, buildings, and structures, and has total responsibility for building maintenance to include, but not limited to, repair and replacement all the respective City-owned or Foundation-owned golf course properties, fixtures, plantings, furniture and related equipment and the heating, utility, and plumbing systems. It is acknowledged by the Contractor that standards (see attached **Exhibit IV**) for the maintenance, upkeep and repair of the golf course (greens, fairways, bunkers, rough, tees, irrigation, etc.), clubhouse, pro shop, and snack bar will be made part of the Agreement. It is further understood that the Contractor will provide the Foundation a monthly management report in a format approved by the Foundation that shall include maintenance to greens, tees, fairways, roughs, building maintenance, levels of irrigation, fertilization, weed control, and other maintenance. Such report may be required on a more frequent basis to be determined by the Foundation and the City. The Contractor will not make any alterations, additions, or improvements to the golf course and facilities without the prior consent of the Foundation. All alterations, additions, and improvements, whether temporary or permanent in character, shall at all times be deemed to be the property of the City and shall remain upon the premises at the termination of the agreement. Management firm will not be responsible for major structural repairs to roofs, exterior walls, heating, air-conditioning, or foundations when the cost of any such repair exceeds two thousand five hundred dollars (\$2,500.00). **The Contractor shall provide and pay for, at a minimum, the maintenance set forth in Exhibit I included in this RFP #15-15.**
19. **Minimum On-Site Equipment.** The Contractor shall provide all equipment needed to maintain the golf course and facilities in accordance with the requirements of this RFP #15-15 and the resulting agreement. The Foundation has determined that the equipment more specifically set forth in **Exhibit II** (Management Contract, section 12) is the minimum required to fulfill those requirements and that **such equipment must be kept on site at the golf course at all times** during the term of the management contract. **No equipment or vehicles other than those required for on-site use at the golf course may be stored on the premises**

In addition to required maintenance equipment, the Contractor shall furnish at least sixty-five (65) power golf carts, new or in "like new" condition, subject to approval by the Foundation, five (5) of which must be electrical for staff use in early mornings to minimize disturbing the residents in the areas surrounding the Golf Course. Thirty (30) of the non-staff golf carts so furnished shall be no older than four (4) years. The remaining thirty (30) non-staff golf carts so furnished shall be less than one year old. All golf carts must be serviced at least weekly by an independent maintenance company hired by the management firm for such purpose, and acceptable to the Foundation. The Contractor shall provide the Foundation with a copy of the maintenance contract with the independent maintenance company, which contract shall also be subject to the approval of the Foundation. The Foundation shall have the right to order the Contractor to stop using and replace any golf cart it deems dangerous, unserviceable or not in keeping with the character of the Golf Course.

Within ten (10) days of the notification of contract award, the successful Contractor shall provide written evidence to the Foundation that it owns or leases all the equipment listed in **Exhibit II** (Management Contract, section 12 & Exhibit IV) and the required golf carts and that such equipment/golf carts will be available at the golf course site by February 1, 2015. All required equipment must be new or in "like new" condition and capable of reliably performing the required maintenance. The Contractor shall be responsible for replacing any required equipment/golf carts which fail to perform reliably during the term of the management contract.

20. **Minimum Staffing.**

a. **On-Site Manager.** The individual proposed to serve as on-site manager of the Golf Course must have full authority to act for and bind the Contractor in all respects with regard to the operation of the golf course, including but not limited to, supervising, hiring and firing employees, authorizing work orders and authorizing payments on behalf of the management firm. The individual proposed shall have served in the capacity of an on-site manager with the above described level of independent authority for a minimum of five years. A higher rating will be assigned to firms who propose that the on-site manager is a principal in the Contractor (see paragraph VIII, 2).

The Contractor shall warrant that the on-site manager is experienced and qualified to supervise all aspects of the operation, maintenance and administration of the Golf Course and is also experienced in supervising the capital improvement projects to be provided by the Foundation. As used in this paragraph, the term "supervise" shall mean the ability to seek cost estimates, bids, oversee actual work, approval/disapprove work, approval/disapprove payment request, and assist the Foundation in any dispute resolution with regard to the capital improvements provided by the Foundation. If, in the opinion of the Foundation, the on-site manager is not qualified to oversee the capital improvement projects undertaken by the Foundation, the Foundation may require the Contractor to provide, at its sole expense, an individual who is qualified to oversee implementation of the capital improvement projects undertaken by the management firm and/or the Foundation.

The on-site manager or a designated assistant manager shall be present on-site at all times during which the golf course is in operation.

The on-site manager shall also attend Foundation meetings as requested and prepare any reports requested by the Foundation regarding the Golf Course.

The Contractor and the on-site manager shall not use Golf Course premises for conduct of any other enterprise or business other than Newton Commonwealth Golf Course business.

The Foundation is committed to maintaining good relations with the neighborhoods surrounding the Golf Course, as well as with the patrons of the Course. To that end, the on-site manager shall be responsible for receiving and responding to any complaints or problems the residents surrounding the Golf Course or patrons have regarding the Course's operation. The on-site manager shall at all times be courteous to residents of the neighborhoods surrounding the Golf Course and patrons, and shall be guided by the Foundation with regard to the resolution of complaints.

b. **Pro Shop Manager.** The Contractor shall employ a Pro Shop Manager to oversee the general operation of the Pro Shop, to manage the Starters and Rangers and Pro Shop counter staff. Such manager shall ensure the satisfaction of all customers that they receive the highest possible level of service which the Foundation is striving to achieve.

c. **Golf Professional.** The Contractor shall employ a Class A member of the Professional Golfers Association of America with a minimum of five years' experience as a Class A Professional, who will be the resident Professional at the Golf Course. This Professional will work as a teaching instructor to promote and grow the game of golf at NCGC. The Golf Pro will operate free Junior golf clinics every Monday and will be available to advise the Foundation in any golf related management decisions they will need. The Golf Pro will also be available to give advice to the Inner Club.

d. **Starter.** The Contractor shall employ a starter to control play on the Golf Course seven (7) days a week, ten (10) hours per day, during April, May, September, October and November and twelve (12) hours per day during June, July and August.

e. **Ranger.** The Contractor shall employ a minimum of one (1) ranger on the Golf Course seven (7) days a week, ten (10) hours per day, during the golf season (presently April 1st through November 30th). A second ranger shall be required for 8 hours per day during June, July, August, and September on Fridays,

Saturdays, Sundays and holidays and during any other very busy period. Any change from this staffing will be required in writing by the Foundation. Such ranger (s) shall take necessary action to keep play moving and orderly, and to ensure that the course rules of play are complied with.

f. **Grounds Staff.** The Contractor shall employ, on a year-round, full-time basis, a grounds staff that shall consist of a minimum of a Superintendent, an Assistant Superintendent, and an Equipment Mechanic. From April 1st to June 1st, a minimum of five (5) additional grounds staff shall be employed for a total of eight (8) grounds staff during this period. From June 1st to September 1st, a minimum of four (4) additional seasonal grounds staff shall be employed for a total of twelve (12) ground staff during this period. From September 1st to November 15th, a minimum of eight (8) total grounds staff shall be employed.

21. **Capital Improvements by the Foundation.** The Foundation has established an ongoing program of Golf Course and building improvements. Additional improvements are anticipated in the future. As has been the practice in the past, future improvements will be funded by monies paid to the Foundation by the Contractor. The Foundation shall prepare an annual budget that itemizes the proposed improvements to be made by the Foundation in the coming year.

The Contractor acknowledges that it does not have any claim against the City or the Foundation, their agents, or contractors for interference in business or damages for interruption of services or interference in the operation of the Golf Course, pro shop, or food and beverage service as a result of any improvements made by the Foundation. The Foundation agrees to use its best efforts to minimize such interruptions or interference in business without waiving its right to make improvements to the Golf Course or its buildings. The Contractor will be required to assist the Foundation in getting contractors and multiple quotes for any projects for which it requests assistance. The Contractor will also be responsible as the Clerk of Works to oversee the quality of work being performed in the best interest of the Foundation.

22. **Faithful Performance Bond.** The Contractor will, at or before the execution of the Agreement, furnish to the City an acceptable corporate Performance Bond of two hundred fifty thousand dollars (\$250,000.00), or equivalent security, as security for faithful performance and non-negligent performance of the Agreement. The bond shall be in force at all times during the term of the Agreement.
23. **Force Majeure.** Neither the City, the Foundation nor the Contractor shall be deemed in breach of any contract which may result from this proposal submission if it is prevented from performing any of the obligations hereunder by reason of Acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any similar other circumstances not within their reasonable control.
24. **Termination.** The Contractor shall peaceably and immediately give up and surrender to the Foundation the premises and every part thereof at the termination of the agreement.
25. **Non-discrimination/Equal Opportunity.** The Contractor shall comply with all local, state and federal laws and regulations pertaining to non-discrimination and equal opportunity in the areas of employment, subcontracting, and use of City facilities.
26. **Assignment.** The Contractor shall not assign or subcontract any portion of the operation without written approval from the City and the Foundation.
27. **Independent Contractor.** The Contractor and its employees will operate as an independent contractor and are not considered to be Foundation or City employees.
28. **Assignment of Authority.** The Contractor shall be in charge of public play on the Golf Course. The Contractor shall be authorized to enforce applicable ordinances, rules, and regulations for golf operation which are not superseded by any agreement or contract resulting from this proposal.

29. **Special City Events and Contributions.** The City shall have the right to use the Golf Course for special City events, including golf, for not less than five (5) Mondays, excluding holidays, with the option for an additional two (2) special event days to be negotiated between the City and the Foundation, each year of the Agreement. Special City events shall be at no cost to the City or to the Foundation. In addition, the Contractor shall annually contribute fifteen thousand dollars in five equal payments to a Newton charitable organization(s) selected by the Mayor of the City (the Mayor's charitable fund)
30. **Signs.** The Contractor shall not place any sign or advertisement upon any property of the City or upon any vehicle used by the firm directly for the concession under any contract or agreement which may result from this proposal without written approval of the Foundation.
31. **Inner Club.** The Newton Commonwealth Inner Club is an independent group with its own Board of Directors. It operates a USGA handicap system and tournaments throughout the season. Approximately 10 tournaments are held at 8:00 a.m. on Saturdays or Sundays. The Contractor has the right to approve the requested tournament schedule before each season. It is the intent of the Foundation for the Inner Club to continue to operate independently with no revenues being derived by the Contractor for their operation.
32. **Season Ticket Holders.** There are currently no more than sixty (60) season ticket holders who receive for an annual payment unlimited golf and a three day advance tee time beyond the general public. This number is capped at sixty and will not increase.. Any member on the Board of the Foundation does have the right to purchase a season ticket for him/herself at any time. Any season tickets not renewed will be filled from the waiting list by Newton residents only. Season tickets will be good only between April 1 and November 30.
33. **Noise Ordinance.** The Contractor must comply with City's Noise Ordinance, which currently restricts the Contractor from running motorized equipment before the hours of 7:00 a.m. weekdays and 9:30 a.m. on weekends and holidays and after 8:00 p.m. any day of the week. The Contractor will be required to comply with any lawful amendments to the current ordinance.
34. **Canine Care.** The Foundation owns a Border Collie specially trained for geese control. Manager will be responsible for daily care, feeding, and maintenance of the Border Collie. The Foundation will be responsible for the dog's veterinary care as needed.

END OF SECTION

VII. TECHNICAL PROPOSAL - MINIMUM CRITERIA

Any proposer submitting a proposal for golf course management services must satisfy all the **Minimum Criteria** listed below.

Proposals that do not demonstrate compliance with the Minimum Criteria will not be further considered.

1. Five (5) years' experience by the proposer in the area of golf course management, PUBLIC or PRIVATE.
2. Proposer must have two (2) or more golf courses presently under its management.
3. Five (5) years' experience by the individual who will be the on-site manager of the Newton Commonwealth Golf Course in managing a regulation 18-hole public golf course.
4. Five (5) years' experience by the individual who will be the full-time on-site Pro Shop Manager in managing a Pro Shop operation at a first class regulation 18 hole public golf course.
5. Five years as a *Class A* member of the Professional Golfers Association of America by the person who will be the resident professional at the Golf Course.
6. Five years' experience or its equivalent, by the individual who will be the full-time on-site Course Superintendent in managing the greens keeping duties of a regulation 18-hole public golf course. Such Superintendent must be a GCSAA *Class A* superintendent, who has successfully completed two (2) years of an accredited agronomy school, or equivalent.
7. Provide the required Proposal Deposit.
8. Provide specified staffing levels and equipment requirements.
9. Bidder's Qualifications And References Form
10. Certificate of Tax Compliance
11. Certificate of Non-Collusion
12. Debarment Letter
13. IRS Form W-9

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VIII. TECHNICAL PROPOSAL - COMPARATIVE EVALUATION CRITERIA AND STANDARDS

Proposals that meet or exceed the minimum criteria will be evaluated and rated on the basis of the following comparative criteria. To the extent that a criterion is based on the evaluation of a proposer's plan, the proposer shall provide a plan that will allow for a meaningful evaluation of that plan. The city reserves the right to ask any proposer to provide additional supporting documentation in order to verify its response.

Ratings of Highly Advantageous (HA); Advantageous (A); Not Advantageous (NA); or Unacceptable (U) will be given to each of the following criteria for each proposer.. A composite rating will then be determined. A composite rating of Highly Advantageous or Advantageous may be assigned only if a proposal has received at least one such rating among the criteria listed below.

To the extent that an Evaluation Criterion requires the certification of fact and this RFP does not require otherwise, a proposer's certification as to that fact shall be an adequate response provided, however, that on request the proposer shall provide such evidence as the City may request to support that fact.

1. **The experience of the proposer in managing, maintaining and operating a first-class 18-hole public golf course. As used in this criteria, the term "first-class" shall mean a comparably sized public golf course at which the quality of grounds maintenance, conditions of play and course amenities are of at least the equivalent or better quality than that found at the Newton Commonwealth Golf Course.**

Highly Advantageous - More than five (5) years' experience by the proposer at a first-class public golf course meeting the criteria set forth above. *Advantageous* - Three (3) to five (5) years' experience by the proposer at a first-class public golf course meeting the criteria set forth above.

Not Advantageous - Less than three (3) years' experience by the proposer; or experience involving operation of a first class public golf course under the criteria set forth above; or experience involving operation of a public golf course, first class or otherwise.

Unacceptable - No experience in the management, maintenance or operation of an 18 hole public golf course.

2. **The proposer's ability to fairly compensate itself, generate income to the public entity, and provide affordable golfing services and facilities to the public as demonstrated by at least three (3) fiscal years' financial statements.**

Highly Advantageous - Course consistently generated high income for the political entity while keeping fee costs for the public low.

Advantageous - Course generated moderate income for the political entity while keeping fee costs for the public reasonable.

Not Advantageous - Course generated moderate income for the political entity or kept fee costs for the public reasonable, but not both.

Unacceptable - Course generated little or no income for the political entity and fee costs for the public were not low.

3. **Experience and qualifications of management firm's key staff.**

Highly Advantageous - Submission of an organizational plan showing a structured organization with clearly delineated responsibilities and identifying the proposer's staff who will be assigned to manage, operate and maintain the Golf Course. Staffing levels must satisfy or exceed the required minimum staffing and experience levels set forth in RFP #15-15. A principle of the proposer shall serve as the on-site manager.

Advantageous - Submission of a plan identifying the proposer's staff who will be assigned to manage, operate and maintain the Golf Course, but not clearly indicating organizational structure or delineating responsibilities. Staffing levels satisfy the required minimum staffing and experience levels set forth in RFP #15-15. Regardless of the quality of the organizational plan, if the on-site manager is not a principle in the proposer, this criterion will only be rated "advantageous".

Not Advantageous - Submission of a plan which fails to identify the proposer's staff who will be assigned to manage, operate and maintain the Golf Course, fails to show staffing levels which satisfy the required minimum staffing and experience levels set forth in RFP #15-15, or shows a poor organizational structure or delineation of responsibilities.

Unacceptable - No information provided regarding experience and qualifications of proposers key staff.

4. **Credit and Other References.**

Highly Advantageous - Three (3) or more golf industry references which indicate superior quality of performance; good credit rating showing that proposer makes timely payment of its bills, taxes and does not have excessive debt.

Advantageous - Less than three (3) golf industry references which indicate superior quality of performance; or golf industry references which indicate only good quality of performance; or fair credit rating.

Not Advantageous - Less than three (3) golf industry references and golf industry references which indicate only fair quality of performance; or poor credit rating.

Unacceptable - No information provided from golf industry references or credit report; or a credit report indicating failure by the proposer to remain current in payment of bills or excessive debt; or failure by the proposer to make timely payment of all applicable taxes.

5. **Proposer's plan to provide additional incentives to increase the percentage of play by Newton residents, by juniors and to increase community spirit and public awareness of the Golf Course as a community resource.**

Highly Advantageous - A plan which sets forth at least three (3) specific incentives which will be offered by the proposer. The incentives should have either a proven effect or be reasonably calculated to achieve their goals and should be in keeping with the character of the Golf Course as a community resource. Such plan would involve no cost to the Foundation.

Advantageous - A plan which sets forth less than three (3) specific incentives or sets forth incentives which are somewhat speculative in effect. Such plan would involve no cost to the Foundation.

Unacceptable - No plan; a plan which involves cost to the Foundation; a plan which sets forth incentives which are speculative or which are not in keeping with the character of the Golf Course as a community resource

6. **Proposer's plan to continue to ensure and promote the "good neighbor" relationship of the Golf Course to the surrounding residential areas.**

Highly Advantageous - A plan which sets forth a proactive way to address neighborhood concerns/complaints preventing neighborhood problems from arising, specifically describing the manner in which they will be addressed, facilitating communication of neighborhood problems to the proposer and requiring a principle of the proposer, as the on-site manager, to resolve problems. Include a reporting requirement to the Foundation.

Advantageous – A plan which generally describes the way in which neighborhood complaints will be addressed, requires the on-site manager to address and resolve neighborhood problems, and includes a reporting requirement to the Foundation.

Unacceptable - A poor or no plan submitted; provides that the neighborhood concerns/complaints will be addressed by someone other than the on-site manager; lacks a reporting requirement to the Foundation.

7. Accountability of Revenues. The proposer shall submit a detailed description of the method to be used to ensure the accountability for all revenues generated at the golf course

Highly Advantageous - A plan which specifically details an accurate method for recording and accounting for revenues in each division of the Golf Course; and includes a comprehensive report describing the manner in which these revenues are reported to the Foundation and how the amounts can be verified by the Foundation; and identifies the person who would be submitting this information to the Foundation.

Advantageous – A plan which generally describes an accurate method for recording and accounting for revenues in each division of the Golf Course; and includes a report describing the manner in which these revenues are reported to the Foundation and how the amounts can be verified by the Foundation; and identifies the staff position who would be submitting this information to the Foundation.

Unacceptable - A poor or no plan submitted; or does not sufficiently describe an accurate method for accounting for the revenues in each division of the Golf Course; or does not have a method for the Foundation to verify the accuracy of the numbers submitted; or does not present either the name or staff position of the person who would be submitting the information to the Foundation.

IX. EVALUATION OF PROPOSALS AND AWARD OF CONTRACT

The contract will be awarded to the *responsive and responsible* proposer deemed to be most advantageous determined by the City and the Foundation, taking into consideration both the Technical and Price Proposals. Any proposals which submit a price that is abnormally low or high, as determined by the City and the Foundation, may be rejected as not responsible. All proposals shall remain firm for ninety (90) calendar days after the proposal opening.

As used herein, the terms “responsive” and “responsible” shall have the meanings given to such terms in M.G.L. c. 30B, §2.

Proposers may be investigated by the City or the Foundation or their designated representative to determine if they are qualified to perform the Agreement. The investigation will seek to determine whether the proposer is adequate in size, is authorized to do business in the City, possesses comparable previous experience and whether the proposer’s available equipment and financial resources are adequate to assure the City that the contract will be completed in accordance with the terms thereof.

The Foundation may perform site visits to proposers’ managed golf courses (existing or previous) . These site visits shall include, but not be limited to, a review of the pro shop operations, fee collection systems, food service operation, building cleanliness and upkeep, and overall golf course maintenance conditions.

In evaluating Proposals, the City and the Foundation will consider the qualifications of only those proposers whose proposals are in compliance with the requirements set forth in this RFP. The City and the Foundation reserve the right to reject any proposal if the evidence submitted by, or the subsequent investigation of such proposer fails to satisfy the Foundation that the proposer is properly qualified to carry out the obligations of the Agreement.

X. PROPOSAL SUBMISSION REQUIREMENTS

- 1. Price Proposal.** Management firm's fee (percentage of gross income) to be paid to the Foundation shall be submitted on **Attachment A**. This completed form shall be signed by an authorized representative of the proposer and placed in a separate sealed envelope marked "Price Proposal - Golf Course Operation Services."
- 2. Technical Proposal.** Management firm's technical proposal shall be signed by a duly authorized representative of the proposer and submitted on **Attachment B** and shall include narrative descriptions for each Evaluative Criteria contained in Section VIII. Each narrative description shall be typewritten on a separate page with the item number and category at the top and the name of the proposer at the bottom:

Attachment B and the narrative descriptions shall be placed in a separate sealed envelope marked "Technical Proposal - Golf Course Operation Services."

Proposers must acknowledge any/all Addendum for this RFP on the first page of their Technical Proposal.

- 3. Certification of Non-Collusion and Tax Attestation.**

Each proposal must include a signed Certificate of Non-Collusion and Tax Attestation on **Attachment C**. This Certificate should be included in the envelope containing the Technical Proposal.

XI. EVALUATORS

The City's Chief Procurement Officer shall designate members of the Foundation to evaluate the proposals.

END OF SECTION

EXHIBIT I

AGREEMENT BETWEEN THE CITY OF NEWTON AND THE NEWTON COMMONWEALTH FOUNDATION

This Agreement dated **March 2, 2014** by and between the **City of Newton** a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts with an address of 1000 Commonwealth Avenue, Newton Centre, MA 02459, acting by and through the Mayor of the City of Newton (hereinafter "the City") and the **Newton Commonwealth Foundation**, a public instrumentality of the City of Newton and a Massachusetts charitable corporation organized under Chapter 180 of the Massachusetts General Laws, with a principal place of business of c/o the City of Newton Parks and Recreation Department, 124 Vernon Street, Newton, MA 02458 (hereinafter "the Foundation"); collectively "the Parties".

WHEREAS, the City and the Foundation entered into a Letter of Intent dated January 30, 1992, and thereafter a ten year written Agreement dated March 2, 2004 concerning the operation of the Newton Commonwealth Golf Course ("Golf Course"); and,

WHEREAS, said Agreement expires on March 2, 2014; and, WHEREAS the Foundation has been an important and helpful steward of the Golf Course for more than thirty years; and,

WHEREAS, the City wishes to have the Foundation continue to oversee the operation of the Golf Course in accordance with the terms of this Agreement; and

WHEREAS the City wants to ensure that the Foundation has the resources needed to continue that stewardship so as to assure a first class golf course for the City;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Operation of the Golf Course:

a. The City hereby grants the Foundation a license to use the Golf Course for the term of this Agreement. The Foundation has entered into a Management Contract ("Contract C- 3004") with a qualified entity to operate the Golf Course ("Operator") as a public golf course in accordance with this Agreement. In the event of a material conflict between the provisions of this Agreement and Contract C- 3004, the conflicting provision shall be enforced to the extent permitted by C-3004, unless the Foundation and the Operator agree to amend Contract C-3004. In any event, any such conflicting provision shall take full effect as of the next management contract that is expected to bid and awarded with an effective date of January 1, 2015. The parties agree that the provisions of paragraph 3. c. (Accounting System) do not materially conflict with the provisions of Contract C-3004. The Foundation agrees to continue to maintain a contract with an Operator for the term of this Agreement.

b. The Foundation agrees to oversee the operation of the Golf Course and to ensure its operation as a first class public Golf Course at no expense to the City. The responsibilities of the Foundation shall include the following:

- i. Prepare an annual Operating Budget and submit the same to the Mayor and/or his designee "(Mayor)" no later than February 1, each year.
- ii. Prepare and submit to the Mayor a five (5) year Master Plan of Capital Improvements ("Master Plan") to be made at the Golf Course and a corresponding Annual Plan to implement particular capital improvements.
- iii. Prepare bid specifications as required by applicable provisions of Massachusetts General Laws and/or City Ordinances for all work that is not required to be completed at the Golf Course by the Operator as further provided herein.
- iv. Establish all rules, regulations and policies relating to the operation of the Golf Course provided that the fee schedule shall be subject to the approval of the Mayor.

2. Golf Course Consultants:

a. The parties recognize three roles for consultants: 1) review of budget or capital plans; 2) regular oversight of the Operator and independent evaluation of Operator and 3) preparation of bid specifications. The parties envision the use of a primary consultant who will serve as a general advisor to the Foundation and such additional consultants with specialized expertise as may be needed for particular matters.

The Foundation agrees to select a qualified person or entity, subject to the approval of the Mayor, ("Primary Consultant") to assist the Foundation in carrying out its responsibilities pursuant to this Agreement. The Foundation shall execute a written agreement with the Primary Consultant within sixty days after the execution of this Agreement. The Primary Consultant and any other specialized consultants shall be paid for by the Foundation from the revenues generated from the operation of the Golf Course. The Primary Consultant and any other specialized consultants shall report to the Foundation.

b. The Primary Consultant's responsibilities shall include, but not be limited to, assisting the Foundation with the following tasks:

- i. Review and make specific recommendations concerning the annual Operating Budget (primarily as it relates to the maintenance of the Golf Course).
- ii. Review and make specific recommendations concerning the Master Plan, and the Annual Plan for implementing capital improvements. Develop a schedule of improvements to be paid for by the Operator from operating revenues and designate improvements that should be classified as capital improvements to be paid for from Foundation funds.
- iii. Conduct regular inspections on a continuous basis of the Golf Course with the Foundation Chair and/or designee to evaluate the condition of the course (maintenance and implementation of improvements). Make recommendations to the Foundation for corrective action (measures, steps) to be taken by the Operator to address any deficiencies in Golf Course maintenance or operation.
- iv. Prepare an annual written report on or before March 1 of each year summarizing the non-financial operations and conditions of the Golf Course with a copy to the Mayor and a copy to the City Clerk.

c. The Foundation shall retain such other consultants as it deems necessary to provide assistance with the following tasks:

i. Review and/or prepare bid documents pertaining to work performed in accordance with the Annual Plan and repairs to the Golf Course estimated to cost in excess of twenty-five thousand dollars (\$25,000) or any other work pertaining to the Golf Course grounds and facilities that will not be performed by the Operator.

ii. Prepare a Request for Proposals ("RFP") for an Operator to be bid during 2014 for a term commencing January 1, 2015. The RFP shall contain a minimum price to be paid by the Operator and shall set forth the proposed terms and conditions of the contract between the Foundation and the Operator, including the capital improvement and maintenance obligations of the Operator. The terms of the RFP, and all subsequent RFPs for an Operator shall include, but not be limited to, the conditions stated in Attachment A.

3. Financial Management, Procedures for Expenditures:

a. Single Account, Authorization of Expenditures: The Foundation agrees to maintain a single account for the sole purpose of maintaining the Golf Course ("Golf Course Fund") and, to the extent that it has not already done so, to provide an accounting of all monies currently held by the Foundation. The Foundation shall deposit all funds paid to the Foundation by the Operator into the Golf Course Fund. The Foundation will pay all bills for the Golf Course from the Golf Course Fund. The Foundation Treasurer shall authorize (in writing) all expenditures from said Fund.

b. Bond:, The Foundation Treasurer shall provide the City with a fidelity bond, in a form approved by the City Comptroller and the City Solicitor, in an amount equal to the) the total amount of funds in the Golf Course Fund.

c. Accounting System: The Foundation agrees to:

i. Establish a procedure for monitoring cash management by the Operator based upon recommendations from the City Comptroller and Treasurer.

ii. Establish an accounting system that includes the preparation of quarterly Golf Course Fund financial statements, including, but not limited to, a balance sheet, an operating statement, a statement of cash flows, and a budget-to-actual operating statement.

iii. File each quarterly statement with the Chief Administrative Officer of the City and the City Comptroller within thirty (30) days after the end of each fiscal quarter.

iv. Contract with a qualified certified public accountant to perform an annual financial audit of the Golf Course Fund financial statements.

v. Submit the annual audited financial statements to the Chief Administrative Officer of the City and the City Comptroller not later than July 31 in each year.

vi. Require the Operator to submit annual reports of the Golf Course financial operations. The Foundation and the Mayor shall mutually agree as the selection of an accounting firm. The financial report shall be based on agreed upon procedures as developed by the accounting firm in consultation with the Foundation, the Mayor and the City Comptroller.

vii. Make available all books, records, reports, data and any and all information related to the operation of the Golf Course to the Mayor upon request.

d. The Foundation agrees to implement the changes to the Accounting System listed above as of the date of the execution of this Agreement, unless the Parties agree to another date in writing.

4. Term:

a. The Term of this Agreement shall be five years commencing on the date hereof and terminating on March 2, 2019 unless terminated prior to said expiration date as provided in. paragraph 13; provided, however, that the City may, at its sole option, extend the Agreement for one additional five year term.

5. Payments to the City:

a. The Foundation agrees to make an annual payment to the City of not less than Fifty Thousand Dollars (\$50,000.00) to be used for conservation and/or recreation purposes plus an amount equal to the greens fees generated from not more than eight (8) selected days (weekdays only) of operation during the months of May through September. The exact days shall be selected by mutual agreement of the Operator and the Foundation. All funds received by the City shall be used for such purposes as determined by the Mayor.

b. In addition, the City of Newton shall have the right to use the Golf Course for special City events, including golf, for not more than three (3) weekdays, excluding holidays, provided, however, that each such special City event held will reduce by one (1) the number of days for which gross greens fees will be contributed to a charitable organization in accordance with the above paragraph. The City shall have the option for additional special event days to be negotiated between the City and the Foundation, each year of the Agreement. Special City events shall be at no cost to the City of Newton or to the Foundation.

6. Preparation of the Annual Operating Budget:

a. No later than March 1 each year, the Foundation shall prepare and submit to the Mayor its budget recommendations for the operation of the Golf Course for the next successive fiscal year ("Annual Budget"). The Annual Budget shall include a projection of expenses, reserves and capital improvements that are reasonably necessary for the Foundation's management of the Golf Course. The Mayor shall have final approval of the Annual Budget in consultation with the Foundation.

b. Revisions to the Annual Budget: The Foundation may make line item transfers within the Annual Budget provided that line item transfers of twenty-five thousand dollars (\$25,000) or greater shall require the prior written approval of the Mayor. The Foundation may also make revisions to the Annual Budget and/or to the Annual Plan not exceeding, in the aggregate, \$25,000 per year. Changes to the Annual Budget or to the Annual Plan other than those permitted above shall require the prior written approval of the Mayor.

c. Reserve Account: The Annual Budget shall include a reserve account for unanticipated or extraordinary expenses (including, but not limited to, monies needed for severe weather related damage, vandalism caused by a third party, work that is unrelated to the operation of the Golf Course). The Foundation may make expenditures from the reserve account for emergency repairs provided that emergency repairs estimated to cost in excess of twenty-five thousand dollars (\$25,000) shall be subject to the approval of the Mayor (and subject to any applicable bid law requirements). Expenditures from the reserve account of twenty-five thousand dollars (\$25,000) or greater shall be subject to the prior written approval of the Mayor.

7. Capital Improvements:

a. Capital improvements to the Golf Course shall be made in accordance with the schedule outlined in the Master Plan and the Annual Plan. Changes and/or additions to the Master Plan and/or Annual Plan shall be subject to the approval of the Mayor. Changes and/or additions to the Master Plan and/or Annual Plan of twenty-five thousand dollars (\$25,000) or greater shall be subject to the prior written approval of the Mayor.

b. The Foundation and/or Consultant shall prepare and submit to the Mayor all bid documents and/or estimates pertaining to work to be performed at the Golf Course which will not be completed by the Operator. Work estimated to cost twenty-five thousand dollars (\$25,000) or greater shall be subject to the prior written approval of the Mayor.

8. Purchasing, Bid Solicitations:

a. The Foundation shall comply with the provisions of M.G.L. Chapter 30B as well as M.G.L. Chapter 30 and Chapter 149 and the provisions of the City's Charter and ordinances governing the award and execution of contracts. In particular, with respect to bids pertaining to goods and services, the following procedures will apply:

i. For goods and services in the amount of five thousand dollars (\$5,000) or greater but less than twenty-five thousand dollars (\$25,000) the Foundation and/or the Consultant shall prepare written quotations based on at least a letter bid outlining the minimum terms for such supply or service.

ii. For goods and services in the amount of twenty-five thousand dollars (\$25,000) or greater, the Foundation and/or the Consultant shall prepare written specifications in accordance with the requirements of Chapter 30B or Chapter 30 and shall submit the same for approval to the Mayor.

iii. Goods and services for an amount less than five thousand dollars (\$5,000) shall be in accordance with City Ordinances.

b. Bid awards and contracts for goods and services in the amount of twenty-five thousand dollars (\$25,000) or greater shall be subject to the approval of the Mayor. The City Purchasing Department shall have charge of the bid process in coordination with the Foundation. The Foundation will use its best efforts to submit all required bid materials in a timely fashion, which shall mean, at a minimum, at least four (4) weeks in advance of the deadline for advertising.

9. Insurance:

a. Public Liability Insurance Policy: The Foundation shall require the Operator to maintain at all times a public liability insurance policy in a form and amount satisfactory to the City Solicitor covering the operation of the Golf Course, any golf carts, and all facilities, including but not limited to the clubhouse and the parking lot. The City and the Foundation shall be named as additional insured parties on the public liability insurance policy.

b. Fire, Theft, Vandalism Policy: The Foundation shall require the Operator to maintain at all times a fire, theft and vandalism insurance policy in a form and amount satisfactory to the City Solicitor covering all golf carts used on the Golf Course.

c. Property Loss Insurance: The Foundation shall require the Operator to maintain at all times a property loss insurance policy in a form and amount satisfactory to the City Solicitor covering all facilities at

the Golf Course (including the clubhouse and any building or structure used to house the golf carts). The City shall be named as the loss payee on such policy.

10. Indemnification: The Foundation agrees to require the Operator to hold harmless, indemnify and defend Foundation and City from and against all claims of every kind. The indemnification and hold harmless provisions shall be included in the agreement between the Operator and the Foundation and shall be in a form approved by the City Solicitor.

11. Faithful Performance Bond: The Foundation agrees to require the Operator to provide a bond for the faithful performance of the obligations of the management contract. Said bond shall be in a form and amount deemed satisfactory by the City Solicitor.

12. Compliance with Laws: The Foundation and the Operator shall comply with all federal, state and local laws and ordinances applicable to the operation of the Golf Course or any facilities thereon. The Foundation shall comply with the provisions of M.G.L. Chapter 30B as well as M.G.L. Chapter 30 and Chapter 149 and the provisions of the City's Charter and ordinances governing the award and execution of contracts. The Foundation shall comply with all other applicable laws, including but not limited to, the Public Records Act, the Open Meeting Law and applicable municipal finance controls.

13. Termination:

a. The City may terminate this Agreement prior to March 2, 2019, in the event that the Foundation fails to perform in a timely manner or by the date specified in this Agreement any of the following:

- i. Hire a Primary Consultant as required by paragraph 2 above.
- ii. Establish the Accounting Systems as required by paragraph 3 above.
- iii. Make required payments to the City as required by paragraph 6 above.

b. The City further reserves the right to terminate this Agreement if

- i. For whatever reason, the Foundation determines that the operation of the Golf Course is no longer financially viable.
- ii. The Foundation's management of the Golf Course fails to secure for the City the operation of a first class public golf course without incurring expense to the City.
- iii. If the City determines that the Foundation's performance has been unsatisfactory.

b. Except with respect to paragraph 13 b i., the City shall provide no less than ninety (90) days prior written notice of its intent to terminate this Agreement and provide an opportunity to cure of no less than thirty (30) days.

c. The Foundation may terminate this Agreement by providing no less than ninety (90) days prior written notice to the Mayor.

IN WITNESS WHEREOF the parties have executed this Agreement and four like originals under seal as of the date first written above.

NEWTON COMMONWEALTH FOUNDATION, INC.

By: _____ Date: _____
Steven A. Meyer, Chairman

Approved as to legal form and character:

By: _____ Date: _____
Marie M. Lawlor, Assistant City Solicitor

CITY OF NEWTON:

By: _____ Date: _____
Mayor Setti D. Warren

Attachment A
Minimum Contents of Request for Proposals for Golf Course Operator

The Foundation shall prepare an RFP to be bid during 2014 for a contract with a qualified Operator for a term commencing January 1, 2015. Such RFP, and all subsequent RFPs, shall contain a minimum price to be paid by the Operator and shall set forth the proposed terms and conditions of the contract between the Foundation and the Operator, including the capital improvements and maintenance obligations of the Operator. The terms of the RFP, and all subsequent RFPs for an Operator, shall include, but not be limited to, the following conditions:

- a. A plan of first-class capital improvements to be paid for by the Operator designed to improve all aspects of the golf course, including, but not limited, to tees, greens, trees, parking area and structural improvements to the golf course buildings;
- b. Provide additional incentives to Newton residents designed to increase the percentage of play by Newton residents;
- c. Provide that the Operator include in any payments to the Foundation an amount based upon the savings realized by the Operator due to the Operator's use of non-MWRA water; and
- d. Ensure the continuation of the good relations with the neighborhood.
- e. That the Golf Course be run as a public course, with the Foundation determining all rules, regulations and policies related to the operation of a public golf course;
- f. That a public liability insurance policy covering the operation of the Golf Course, any golf carts, and all facilities, including but not limited to the clubhouse and the parking lot, shall be maintained at all times in an amount and form satisfactory to the City Solicitor following consultation with the Foundation, which policy shall name the City and the Foundation as additional insureds;
- g. That a fire, theft and vandalism insurance policy shall be maintained on the golf carts used on the Golf Course in an amount and form satisfactory to the City Solicitor following consultation with the Foundation;
- h. That a property loss insurance policy shall be maintained on all facilities at the Golf Course in an amount and form satisfactory to the City Solicitor following consultation with the Foundation, which policy shall name the City as the loss payee;
- i. That the Operator shall be responsible for all utilities bills rendered in connection with its use of the Golf Course or any facility thereon;
- j. That the Operator and/or the Foundation shall pay any and all other costs, whether capital or ordinary, incurred in the operation of the Golf Course;
- k. That the Operator shall submit to the Foundation monthly financial statements, the form and content of these statements to be established by the Foundation;

l. That the Operator shall maintain at its own expense adequate security measures to protect the Golf Course, golf carts and facilities, including, but not limited to, requiring the Operator to maintain an alarm system covering the clubhouse and golf cart storage facility, and to maintain security lighting installed by the Foundation on the Golf Course grounds. All security lighting installed on the Golf Course shall be in compliance with guidelines established by the City of Newton Planning Department concerning light trespass.

m. That the Foundation and/or Operator shall comply with all federal, state and local laws and ordinances applicable to the operation of the Golf Course or any facilities located thereon.

EXHIBIT II

Purchasing

Contract #C-2669

MANAGEMENT CONTRACT FOR THE NEWTON COMMONWEALTH GOLF COURSE

This Contract is made on January 16, 2009, by and between

Sterling Golf Management, Inc.
Attn: Kevin F. Osgood
191 Main St.
Westford, MA 01886
(617) 930-8650 / (617) 969-8756
sterlinggolf@aol.com

and the Newton Commonwealth Foundation, Inc., a public instrumentality of the City of Newton and a Massachusetts charitable corporation organized under Chapter 180 of the Massachusetts General Laws (hereinafter the "Foundation"), with a principal place of business c/o the City of Newton Parks and Recreation Department, 70 Crescent Street, Newton, Massachusetts;

WHEREAS, the Foundation was created to assume the responsibilities of the City of Newton (hereinafter "City") with regard to the management and maintenance of the golf course property known as Newton Commonwealth Golf Course (hereinafter the "Golf Course"); and

WHEREAS, the City owns the Golf Course and has executed an Agreement with the Foundation to provide management of the Golf Course through March 2, 2014 ; and

WHEREAS, the Foundation and the City issued a Request for Proposals numbered 09-40 for management and maintenance of the Golf Course pursuant to G.L. c.30B; and

WHEREAS, following evaluation of both the technical and price proposals for management and maintenance of the Golf Course, the City found the proposal submitted by Sterling Golf Management Inc. to be most advantageous to the City and awarded the contract to Sterling Golf Management Inc.;

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties agree as follows:

1. Scope

Sterling Golf Management Inc. (hereinafter the "Management Firm") shall be responsible for the operation, management and maintenance of the Golf Course in accordance with the terms and conditions herein provided, the Request for Proposal to Provide Professional Services (hereinafter "RFP") and the Technical and Price proposals (the "Response") submitted by the Management Firm in response to the RFP. The RFP and the Response are attached and incorporated into this Agreement as Exhibit A and together with this Agreement form the Contract between the parties. The terms and provisions of this Agreement shall take precedent over any inconsistent terms or provisions in Exhibits A

2. Term

The term of this Contract shall commence on January 1, 2009, and shall terminate on December 31, 2011, unless otherwise terminated as herein provided.

City – Contractor Agreement C-2669 Sterling Golf Management Inc.
09-40 Operation of Newton Commonwealth Golf Course

3. Consideration; Management Fee

(a) The Management Firm shall pay to the Foundation annually a sum representing 25% of gross revenue received from the operation of the golf course. Gross revenue shall include all revenues received by the Management Firm, except revenue from pro shop sales, pull cart and golf club rentals, tournament fees, income earned from professional tournaments, lessons given by the staff, and outside income earned by any golf professional on the staff. The percentage stated above shall not, however, apply to gross revenue collected for the operation of the Snack Bar food service and functions. Instead the operator agrees to pay to the Foundation a fixed percentage of 5% of the gross revenues for Snack Bar food service and functions.

(a)(i) For any play during the Off-Season (12/1 to 3/31) (see Paragraph 5 below) Management Firm may retain 100 percent of receipts up to the amount of \$5000.00 in each month. Manager shall pay to the Foundation fifty percent of receipts over the amount of \$5000.00 in each month.

(b) Management Firm shall remit monies due the Foundation on a monthly basis. Each monthly payment shall consist of 25% of the gross revenue, as defined above, and 5% of the Snack Bar revenue collected during that month. Monies shall be payable on or before the 15th day of the month following the end of the month for which payment is made.

(c) In no event shall the total amount paid by the Management Firm to the Foundation in any calendar year during the term of this Contract be less than \$250,000.00. Should the total of monthly payments in any year be less than \$250,000.00, the Management Firm shall make an additional payment to the Foundation prior to December 31st of any year of this Contract to bring the total amount paid to the Foundation in that year to \$250,000.00.

(f) Payments are due on the dates above specified. Interest for late payments shall be at the rate of 1-1/2% per month.

(e) The Management Firm shall submit to the Foundation at such intervals and in such form as the Foundation may determine financial reports to verify the revenue collected by the Management Firm.

4. Course Fees and Charges

Fees for pre-paid green fees, green fees, riding cart rentals, club rentals, and food and beverage must be approved by the Foundation. The Foundation shall establish all fees for the forthcoming season prior to April 1 for each year of the agreement. If the Foundation institutes any increases to the fees in effect at the execution of this Agreement, the Management Firm shall be required to pay the Foundation sixty percent (60%) of the increased revenue it collects related to such fee increases.

5. Seasons for Golf Course

The primary operating period for the Golf Course shall be daily, daylight to dusk, seven (7) days per week, weather permitting, beginning April 1st and ending November 30th, each year of the Contract. The period from April 1st through November 30th shall be considered "In Season". The Golf Course may be operated from December 1 through March 31 (considered the "Off Season"), provided use of the Golf Course does not damage the greens, tees, or other turf areas. Changes to the operating schedule shall only be made with the written approval of the Foundation. However, when weather conditions render the Golf Course unusable for golfing, the Management Firm shall permit to occur and facilitate such recreational activities as shall be determined by the Foundation and which may be set out in rules and regulations to be published by the Foundation.

The Foundation reserves the right to undertake or provide for a more active recreational use of the Golf Course. The Foundation shall be responsible for the payment of any additional insurance premiums necessitated by the Foundation's sanction of such more active recreational use. The Management Firm shall have the specific authority, subject to review by the Foundation herein granted, to ensure that the Golf Course is not damaged by any said recreational use.

6. Operation of the Golf Course

(a) The Management Firm shall operate the premises as a public golf course during the term of this Contract, and shall keep and maintain the Golf Course, the club house, the parking areas, the golf carts, all greens, grounds and shrubbery, and all furnishings, fixtures and property used in connection therewith, in good condition throughout such term, such operation and maintenance to be accomplished with energy, fidelity, diligence and to golf course management standards as determined by the New England Golf Course Superintendent's Association Handbook, giving said Golf Course at all times the benefit of the Management Firm's special knowledge and experience, and employing such special skills as may be required. The Management Firm shall not use the premises for any other enterprise, nor shall the Management Firm use or allow to be used the premises for the conduct of any business other than Newton Commonwealth Golf Course business. The Management Firm shall not use the premises for storage of equipment not solely intended for use on the premises.

(b) The Management Firm represents that, Kevin F. Osgood, a principal in the firm, will serve as the on-site Manager, and that Kevin F. Osgood satisfies all requirements for the on-site manager identified in RFP #09-40; the Foundation hereby approves of Kevin F. Osgood as Manager. The Management Firm, and specifically Kevin F. Osgood, agrees not to accept any other work or engage in any other business activity that could prevent him from devoting his full efforts to the Golf Course during the months of April through November, without the prior written consent of the Foundation.

(c) All rules, regulations and policies relating to the operation of the Golf Course shall be determined by the Foundation following consultation with and/or recommendation by the Management Firm. The Management Firm shall abide by and enforce said rules and regulations. If the Management Firm desires to change any rules, regulations or policies or any fees or charges charged at the Golf Course, it shall first submit a written request to the Foundation, with reasons attached. No change in fees or charges or in the rules, regulations or policies shall be instituted by the Management Firm until the Foundation has approved the charge in writing. Food and beverage charges shall also be subject to approval by the Foundation.

(d) In its operation and management of the Golf Course, the Management Firm shall be subject to, but not responsible for, the enforcement of any Conservation Restrictions of record which may apply to this property.

(e) The Foundation shall have the right to enter upon the Golf Course for the purpose of making such inspections as it deems necessary. If the Foundation determines that the Management Firm has failed to maintain any portion of the Golf Course to the standards set forth in this Contract, the Foundation shall have the right, in its discretion and after notice to the Management Firm, to make such improvements as are necessary to return the Golf Course to its proper condition. The Foundation shall have the right to recoup the cost of any such action from the Performance Bond posted by the Management Firm as a condition of this Contract.

6. Inner Club

The Newton Commonwealth Inner Club is an independent group with its own Board of Directors. They operate a USGA handicap system and tournaments throughout the season. Approximately 10 tournaments are held at 8:00 a.m. on Saturdays or Sundays. The Management Firm has the right to approve the requested tournament schedule before each season. It is the intent of the Foundation that the management firm operate the Inner Club.

7. Season Ticket Holders

There are currently no more than sixty (60) season ticket holders, who receive unlimited golf and a three day advance tee time beyond the general public for an annual payment. The number of season ticket holders is at sixty and will not increase. Any member on the Board of the Foundation does have the right to purchase a season ticket for him/herself at anytime. Any season tickets not renewed will be filled from the waiting list by Newton residents first; if there are no Newton residents on the waiting list, non-residents may purchase a Season Tickets.

8. Neighborhood Relations

The Golf Course shall be operated at all times to ensure good relations with the surrounding neighborhood. The Manager shall be responsible for receiving and responding to any complaints or problems the residents surrounding the Golf Course or patrons have regarding the Course's operation. The Manager shall at all times be courteous to residents of the neighborhoods surrounding the Golf Course and patrons, and shall be guided by the Foundation with regard to the resolution of complaints.

9. Signs

The Management Firm shall not place any sign or advertisement upon any property of the City or upon any vehicle used by the firm directly for the concession under this Contract without written approval by the Foundation.

10. Maintenance

(a) Management Firm will accept all properties, facilities, and equipment "as is" in their presently existing condition. Management Firm shall, at its own expense, make all repairs necessary to maintain City-owned equipment, buildings, and structures, and has total responsibility for building maintenance to include, but not limited to, repair and replacement all the respective City-owned or Foundation-owned golf course properties, fixtures, plantings, furniture and related equipment and the heating, utility, and plumbing systems. It is acknowledged by the Management Firm that Exhibit IV of RFP #09-40 sets forth standards for the maintenance, upkeep and repair of the golf course (greens, fairways, bunkers, rough, tees, irrigation, etc.), clubhouse, pro shop, and snack bar which are hereby incorporated as part of this Management Contract. Exhibit IV is not all inclusive and other standards as may be set forth in the RFP and/or the Management Contract are equally part of the contract. Management Firm will not make any alterations, additions, or improvements to the golf course and facilities without the prior consent of the Foundation and the City of Newton. All alterations, additions, and improvements, whether temporary or permanent in character, shall at all times be deemed to be the property of the City and shall remain upon the premises at the termination of the agreement. Management firm will not be responsible for major structural repairs to roofs, exterior walls, heating, air-conditioning, or foundations when the cost of any such repair exceeds two thousand five hundred dollars (\$2,500.00). The management firm shall provide and pay for, at a minimum, the maintenance set forth in Exhibit IV included in RFP #09-40.

(b) The Management Firm shall keep the clubhouse access road and parking lot free from snow at its expense.

(c) The Management Firm shall provide the Foundation with a monthly management report in a format approved by the Foundation that shall report on maintenance of greens, tees, fairways, roughs, building maintenance, levels of irrigation, fertilization, weed control, and other maintenance. Management reports may be required on a more frequent basis as determined by the Foundation and the City.

11. Utilities/Expenses

All utility expenses such as water, sewer, electricity, gas, waste disposal, telephone, cable television service, etc., which are or may be required to operate the golf course, will be borne by the management firm, including relocation of utilities, permits, connection fees, etc. The golf course has its own water source, connected to its irrigation system. The management firm will be responsible for any electricity associated with operating the pumps for this system. The irrigation system can also draw on City supplied water when necessary. When using this system, the operator will be required to pay the water and sewer charges to the City of Newton.

12. Equipment

(a) The Management Firm shall provide and make available all the personal property and equipment which is peculiar to and needed by the Golf Course for its operation and maintenance in full accordance with RFP #09-40 and this contract; no City-owned or Foundation-owned vehicles or equipment shall be available for use by the Management Firm except as specifically set forth in the RFP. At a minimum, the Management Firm shall be required to provide and keep on site or otherwise make available as needed the equipment set forth in its Response to RFP #09-40. No equipment or vehicles other than those required for on-site use at the golf course may be stored on the premises.

(b) In addition to required maintenance equipment, the Management Firm shall furnish at least sixty five (65) power golf carts, new or in "like new" condition, subject to approval by the Foundation, three (3) of which must be electrical for staff use in early mornings to minimize disturbing the residents in the areas surrounding the Golf Course. Thirty (30) of the non-staff golf carts so furnished shall be no older than four (4) years. The remaining thirty (30) non-staff golf carts shall be less than one (1) year old. All golf carts must be serviced at least weekly by an independent maintenance company hired by the Management Firm for such purpose, and acceptable to the Foundation. The Management Firm shall provide the Foundation with a copy of the maintenance contract with the independent maintenance company, which contract shall also be subject to the approval of the Foundation. The Foundation shall have the right to order the Management Firm to stop using and replace any golf cart it deems dangerous, unserviceable

or not in keeping with the character of the Golf Course. No golf carts other than those required for on-site use at the golf course may be stored on the premises.

(c) Within ten (10) days of the date of this Agreement, the Management Firm shall provide written evidence to the Foundation that it owns or leases all the equipment required in paragraph (a) above, and the required golf carts and that such equipment/golf carts will be available at the Golf Course site by March 1, 2009. All required equipment must be new or in "like new" condition and capable of reliably performing the required maintenance. The Management Firm shall be responsible for replacing any required equipment/golf carts which fail to perform reliably during the term of this Contract.

13. Capital Improvements

(a) The Foundation has established an ongoing program of golf course and building improvements. Additional improvements are anticipated in the future. As has been the practice in the past, future improvements will be funded by monies paid to the Foundation by the management firm. As required by the Agreement the Foundation annually prepares a five year plan that itemizes the proposed improvements to be made by the Foundation in the coming years.

(b) The Management Firm acknowledges that it does not have any claim against the Foundation, its agents, or contractors for interference in business or damages for interruption of services or interference in the operation of the golf course, pro shop, or food and beverage service as a result of any improvements made by the Foundation. The Foundation agrees to use its best efforts to minimize such interruptions or interference in business without waiving its right to make improvements to the golf course or its buildings. The Management Firm will be required to assist the Foundation in getting contractors and multiple quotes for any projects for which it requests assistance. The Management Firm will also be responsible as the Clerk of Works to oversee the quality of work being performed in the best interest of the Foundation.

(c) The Management Firm shall perform the routine and extraordinary maintenance to the golf course and structures described in the section entitled Course Improvements of its Response to RFP #09-40.

(d) The Foundation will be responsible for installation of such protective golf ball barrier netting and poles throughout the golf course as it deems necessary to protect golfers and neighbors. The Foundation will be responsible for replacement of or repairs to the netting, cables, or poles with the following exception: minor repairs to rips in the netting occurring below a height of fifteen (15) feet shall be repaired by and at the expense of the Management Firm.

14. Alterations

(a) The Management Firm agrees not to make any material and/or structural alterations, changes and/or additions to the Golf Course without prior written consent of the Foundation.

(b) Title to all structural improvements on the premises shall remain in the City upon completion thereof and shall be left in place upon termination of this Contract. Title to trade fixtures, fixtures, equipment, and other personal property initially installed or procured by the Management Firm, including replacements thereof, which were not paid for by the Foundation, shall remain in the Management Firm.

15. Books and Records

The Management Firm shall keep the books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Foundation and shall permit inspection of said books and records by the Foundation as often as deemed necessary in the opinion of the Foundation. Upon request by the Foundation, the Management Firm shall also provide monthly financial reports on the operation of the Golf Course, in a form satisfactory to the Foundation. The Management Firm shall submit at the end of each year a certified, audited annual report, or as required by the Foundation, a profit and loss statement of operations under the terms of the contractual agreement, in a form considered to be good accounting practice according to the American Institute of Certified Public Accounts and satisfactory to the Foundation.

16. Insurance

During the term of this Contract, the Management Firm shall maintain in full force and effect at its own cost and expense the following minimum insurance coverage:

- (a) Commercial General Liability insurance with not less than the following limits:
- | | |
|--|-------------|
| General aggregate | \$5,000,000 |
| Products - completed operation aggregate | \$2,000,000 |
| Personal and advertising - injury | \$2,000,000 |
| Each occurrence | \$1,000,000 |
| Fire damage | \$100,000 |
| Medical expense | \$5,000 |

Coverage provided under the commercial general liability policy shall apply exclusively to the operations provided under the Golf Course Management Agreement to be entered into by the successful proposer.

- (b) Workers compensation insurance shall be required in accordance with the Laws of the Commonwealth of Massachusetts.
- (c) Automobile insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:
- | | |
|-----------------|--|
| Bodily Injury | \$1,000,000 per person
\$1,000,000 per accident |
| Property damage | \$500,000 per accident |
- (d) Fire insurance shall be in an amount equal to the replacement cost of the clubhouse, maintenance building, and other structures.
- (e) Pesticide liability shall be provided separately, or as a part of the General Liability Coverage, in an amount not less than \$1,000,000.
- (f) Underground storage tank liability shall be provided separately, or as part of the General Liability Coverage in an amount not less than \$1,000,000.

The City, and the Foundation shall be named as additional insureds on all policies obtained by the Management Firm and certificates of insurance shall be annually furnished to the City and the Foundation by the Management Firm.

All policies shall be obtained from companies licensed to conduct business in the Commonwealth of Massachusetts. Companies providing insurance coverage shall be required to have nothing less than an "A" rating or better by the A.M. Best Company of Aldrich, New Jersey.

Insurance coverage in amount and form shall not be deemed acceptable until approved by the City Solicitor of the City of Newton.

The City and the Foundation reserve the right to require increased insurance coverage at any time during the term of this Contract if the present statutory cap on tort liability of municipalities is increased during the term of this Contract.

17. General Provisions

- (a) Except as otherwise provided in this Contract, the Management Firm shall have the exclusive right to operate, manage, and receive all income from the operation of the Golf Course, golf carts, pro-shop and snack bar.

(b) In the conduct of the Golf Course and related operations, the Management Firm shall comply with all federal, state, and local laws and ordinances as the same are or may be applicable to the Golf Course or any facilities located thereon.

(c) **Compliance with Procurement Regulations.** The Management Firm will when procuring goods or services related to the maintenance of the golf course or City owned buildings, equipment or property comply with applicable provisions of M.G.L. Ch. 30B, M.G.L. Ch. 30, Sec. 39M and M.G.L. Ch. 149, Sec. 44A-L. Such compliance will be subject to audit and oversight by the City of Newton Chief Procurement Officer. Any procurement requiring publicly advertised bids or proposals will be submitted to the City of Newton Purchasing Department which will advertise and receive the bids or proposals. The award of any publicly bid contract is subject to the approval of the Mayor of the City of Newton.

(d) The Management Firm shall be solely responsible for the procuring and filing of all licenses required for the operation of the Golf Course, golf carts, pro-shop and snack bar facilities.

(e) The Management Firm understands and agrees that in the performance of its obligations under this Contract, the Management Firm is at all times acting as an independent contractor, that persons employed by the Management Firm shall in no event be considered to be employees of the City or the Foundation, and that the Management Firm shall be responsible for the payment of wages (and the withholding of taxes in connection therewith) and for the provision of any and all employee benefits. The Management Firm shall obtain and pay for Workmen's Compensation insurance, with the provisions and amount of the policy conforming to applicable statutes, covering all employees of the Management Firm.

(f) The Management Firm shall be in charge of public play on the Golf Course and shall be authorized to enforce applicable ordinances, rules, and regulations for use of the golf course.

(g) **Assignment.** It is understood and agreed between the parties that the services herein provided for are to be performed by the Management Firm and neither this Contract nor any services, rights or duties contained herein and provided hereunder may be assigned to any other person or party without the express written consent of the Foundation.

(h) The parties hereto acknowledge that in the event the Agreement between the City of Newton and the Newton Commonwealth Foundation terminates prior to March 2, 2014, and while this contract is in effect, the Management Firm agrees to the full assignment of the Foundation's interest in this Management Agreement to the City of Newton or a party designated by the City in the event the Agreement is not renewed or replaced with a contract between the City and the Foundation.

(i) **Contributions and Special City Events.** The Management Firm shall annually make charitable contribution of fifteen thousand dollars (\$15,000) in five equal installments to a Newton charitable organization(s) selected by the Mayor of the City of Newton.

In addition, the City of Newton shall have the right to use the Golf Course for special City events, including golf, for not less than five (5) weekdays, excluding holidays. The City shall have the option for an additional two (2) special event days to be negotiated between the City and the Foundation, each year of the agreement. Special City events shall be at no cost to the City of Newton or to the Foundation.

(i) The Management Firm shall comply with all requirements of The City of Newton noise ordinance in effect that currently restricts the Management Firm from running motorized equipment before the hours of 7:00 a.m. weekdays and 9:00 a.m. on weekends and holidays and after dusk any day of the week. The Management Firm will be required to comply with any lawful amendments to the current ordinance.

18. Liability and Indemnity

(a) The Management Firm shall save the Foundation and the City harmless from all loss and damage occasioned by the use or escape of water or by the bursting of pipes, as well as from any claim or damage resulting from neglect in not removing snow and ice from the club house, the access road to the club house, or by any nuisance made or suffered on the Golf Course.

(b) The Management Firm agrees, to the extent not expressly prohibited by law, that it shall indemnify and hold harmless the City and the Foundation and their respective officers, agents, servants and employees from all liability

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for any damage either to persons or property sustained by the Management Firm or by other persons due to the Golf Course or any part thereof or any appurtenances thereof being out of repair or due to the happening of any accident in or about the Golf Course or club house (hereafter jointly referred to as the "premises") or due to any act or neglect of any person occurring on the premises or arising out of performance of the Management Firm's obligations under this Contract. This provision shall apply particularly (but not exclusively) to damage caused by water, snow, frost, steam, sewage, gas, sewer gas or odors or by the bursting or leaking of pipes, faucets and plumbing fixtures, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause of an entirely different kind. The Management Firm further agrees that all personal property upon the premises shall be at the risk of the Management Firm only, and that neither the City nor the Foundation shall be liable for any damages thereto or theft thereof.

In addition, the Management Firm agrees to defend with counsel approved by the City and the Foundation, save harmless and indemnify the City and the Foundation from all claims of liability for injury, loss, accident or damage to any person or property and from any claims, actions, proceedings, and expenses and costs in connection therewith (including, without limitation, reasonable counsel fees) arising from the omission, fault, willful act, negligence or other misconduct of the Management Firm and persons for whose conduct the Management Firm is legally responsible occurring on the premises or arising out of performance of the Management Firm's obligations under this Contract. In addition, the Management Firm agrees to defend with counsel approved by the City and the Foundation from any claims of liability for injury, loss, accident or damage to any person or property, and from any claims, actions, proceedings and expenses and costs in connection therewith (including, without limitation, reasonable counsel fees), arising from any use made or thing done or occurring on the premises which is not due solely to the omission, fault, willful act, negligence or other misconduct of the City and/or the Foundation or any persons for whose conduct the City and/or the Foundation is legally responsible.

19. Faithful Performance Bond

The Management Firm will, at or before the execution of this Contract, furnish to the City an acceptable corporate surety bond in the penal sum of Two Hundred and Fifty Thousand (\$250,000.00) Dollars or equivalent security, as security for faithful performance and non-negligent performance of this Contract. The bond shall be in force at all times during the Contract.

Should the Management Firm be unable to provide a corporate surety bond, it may substitute the bond with another form of security instrument that is satisfactory in amount and form to the City Solicitor.

20. Equal Opportunity in Hiring

The Management Firm shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and shall comply with all local, state and federal laws and regulations pertaining to non-discrimination and equal opportunity in the areas of employment, subcontracting and use of City facilities. The Management Firm shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Further, the Management Firm shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex or national origin.

21. Termination

(a) In the event the Golf Course is not managed in a manner deemed by the Foundation to be in accordance with this Contract or any of its terms or conditions, or in the event that the Consideration required in Paragraph 3 above is not paid when due, the Foundation shall have the right at any time during said term to cancel this Contract upon forty-five (45) days notice in writing to the Management Firm setting forth what has been deemed unsatisfactory by a breach of the Contract. In the event the Management Firm fails to cure the default complained of, or matters deemed unsatisfactory, within the time set forth in Paragraph 22 herein, termination of this Contract shall be automatically effective without further notice to the Management Firm. The Foundation may then take possession of the Golf Course, and may take any such other actions and pursue any remedies as provided in law or equity. The Management Firm shall pay any costs and reasonable attorney's fees in connection with any such default. The Foundation shall also be entitled to recoup any loss it suffers by reason of the Management Firm's default from the security provided in Paragraph 19.

(b) In the event that during the term of this Contract any physical or mental incapacity prevents Kevin F. Osgood from overseeing the operation of the Golf Course, this Contract may be terminated by the Foundation upon

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forty-five (45) days notice in writing to the Management Firm, and the Contract shall automatically terminate without further notice on the 45th day following receipt thereof by the Management Firm. In such event, however, the Management Firm shall not be liable to the Foundation for any additional payments provided for by this Contract. No such notice shall be sent to the Management Firm until the following have occurred: (i) at least 2/3 of the members of the Foundation present at a duly noticed meeting vote that the Contract should be terminated because of the physical or mental capacity of Kevin F. Osgood to oversee the operation of the Golf Course; (ii) within thirty (30) days after said vote, the Foundation nominates a medical doctor to evaluate Kevin F. Osgood, the Management Firm nominates a medical doctor, and the two medical doctors nominate a third medical doctor or, alternatively, the Foundation and the Management Firm agree upon one medical doctor; and (iii) the medical doctor (if only one is appointed) or a majority of the three medical doctors appointed issue a written report concluding that Kevin F. Osgood is physically or mentally incapable of continuing to oversee the operation of the Golf Course in the manner required by this Contract.

(c) The Management Firm shall peaceably and immediately give up and surrender to the Foundation the premises and every part thereof at the termination of this Contract for any reason.

22. Default

Each of the following shall be deemed an event of default, for which this Contract may be terminated pursuant to the procedure set forth in the termination section above:

(a) If the Management Firm shall default in the payment of fees or any other sums under this Contract for fifteen (15) days after notice thereof;

(b) If the Management Firm fails to keep in full force and effect all Insurance policies required in Paragraph 16;

(c) If the Management Firm fails to post the security required in Paragraph 19;

(d) If the Management Firm fails to cure a material breach in the performance or observance of any other term, covenant or condition of this Contract within thirty (30) days after notice thereof, or, if such breach is not capable of being completely cured or remedied within said thirty (30) day period, if the Management Firm shall not have diligently commenced curing such default within such thirty (30) day period and shall not thereafter with reasonable diligence and in good faith proceed to remedy or repair such default;

(e) If the Management Firm abandons the premises, or fails to maintain the premises and to keep the premises open to the public for daily use for thirty (30) days after notice thereof;

(f) Thirty (30) days after the filing of, execution or occurrence of: (a) a voluntary or involuntary petition in bankruptcy or for reorganization or for an arrangement by or against the Management Firm; (b) adjudication of the Management Firm as a bankrupt or insolvent or insolvency in any bankruptcy proceeding; (c) a petition or other proceeding by or against the Management Firm for, or in the appointment of, a trustee, receiver, guardian, server or liquidator of the Management Firm with respect to all or substantially all of his property; (d) a petition or other proceeding by or against the Management Firm for its dissolution or liquidation, or the taking of possession of the property of the Management Firm by any governmental authority in connection with dissolution or liquidation; (e) the taking by any person of the Golf Course property or any portion thereof upon execution, attachment, or other process of law or equity.

23. Non Waiver of Defaults

Waiver by the Foundation of any breach by the Management Firm of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach the same or any other term, covenant or condition.

24. Force Majeure

Neither the Foundation nor the Management Firm shall be deemed in breach of this Contract if it is prevented from performing any of the obligations hereunder by reason of Acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any similar other circumstances not within its reasonable control.

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25. Liens

The Management Firm shall keep the Golf Course and any improvements thereon free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by the Management Firm, his employees, agents and contractors, and the Management Firm agrees to reimburse the City and the Foundation for any attorney's fees incurred in defense of proceedings to enforce or foreclose such liens.

26. Taxes

Management firm shall be responsible for paying, prior to delinquency, any and all taxes and assessments levied or assessed against the Golf Course in connection with the Golf Course and the management firm's operation thereof. The City of Newton charges a Personal Property Tax for all property owned by the management company. This tax will cover golf cars, equipment, tables, chairs, etc. and is payable quarterly to the City.

27. Notices

Any notice required or permitted to be given under this Contract to either party shall be in writing and shall be sent by registered or certified mail, postage prepaid, or delivered by hand:

(a) If intended for the Foundation, addressed to:

Chairperson
Newton Commonwealth Foundation, Inc.
c/o the Parks and Recreation Department
70 Crescent Street
Newton, Massachusetts 02466

With a copy to:

City Solicitor
Newton City Hall
1000 Commonwealth Avenue
Newton Center, MA 02459;

and

(b) If intended for the Management Firm addressed to:

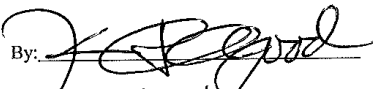
Sterling Golf Management, Inc.
Kevin Osgood
191 Main Street
Westford, MA 01886
(617) 930-8650 (617) 969-8756
sterlinggolf@aol.com

28. Entire Agreement

This Contract constitutes the entire agreement of the parties hereto and may not be altered, amended or modified except by an agreement in writing, signed by all parties hereto and specifically referring to this Contract.

IN WITNESS WHEREOF, the parties hereby executed this Contract under seal as of the date first above written.

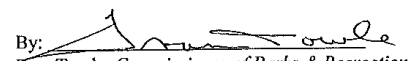
Sterling Golf Management Inc.

By: 
Date: 12/24/2008

Approved as to legal form
and character

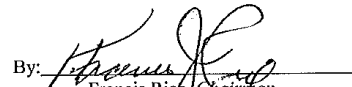
By: 
Marie Lawlor, Assistant City Solicitor

Date: 3/4/2009


By: 
Fran Towle, Commissioner of Parks & Recreation

Date: 2-24-09

Newton Commonwealth Foundation

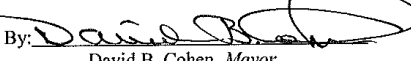
By: 
Francis Rice, Chairman
Date: 2/18/09

Award made pursuant to G.L. C.30B, sec.6

By: 
Re Cappoli, Chief Procurement Officer

Date: 3/3/09

CONTRACT APPROVED

By: 
David B. Cohen, Mayor

Date: 3/5/09

CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of Sterling Golf Management Inc
(insert full name of Corporation)
2. corporation, and that Kevin F. Osgood
(insert the name of officer who signed the contract and bonds.)
3. is the duly elected President
(insert the title of the officer in line 2)
4. of said corporation, and that on December 24, 2008
(insert a date that is ON OR BEFORE the date the officer signed the contract and bonds.)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. Kevin F. Osgood the President
(insert name from line 2) (insert title from line 3)


of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: Carolyn G. Osgood *AFFIX CORPORATE SEAL HERE*
(Signature of Clerk or Secretary)*
7. Name: Carolyn G. Osgood
(Please print or type name in line 6)*
8. Date: December 24, 2008
(insert a date that is ON OR AFTER the date the officer signed the contract and bonds.)

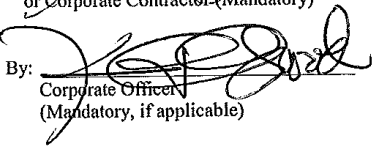
* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.*


**Signature of Individual
or Corporate Contractor (Mandatory)

*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

By: 
Corporate Officer
(Mandatory, if applicable)

Date: 12/24/08

* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.



SURETY BONDS

United Casualty and Surety Insurance Company - 170 Milk Street Boston, Massachusetts 02109

Bond No. 5869RW1208
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we STERLING GOLF MANAGEMENT, INC. as Principal and UNITED CASUALTY AND SURETY INSURANCE COMPANY, 170 Milk Street, Boston, MA 02109, as Surety are held and firmly bound unto:

The City of Newton, Massachusetts
70 Crescent Street
Newton, MA 02458

as Oblige, hereinafter called the Oblige, in the penal sum of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) for which payment well and truly be made we do bind ourselves, our heirs, executors, administrators and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that:

WHEREAS, the Principal entered into a certain contract with the Oblige dated 1/1/2006 for MANAGEMENT OF NEWTON COMMONWEALTH GOLF COURSE, which contract is referenced herein.

NOW, THEREFORE, if said Principal shall well and truly perform all the services in said contract, then this obligation to be void; otherwise to remain in full force and effect. This obligation shall apply only to the work provided for in said contract for the period commencing 12/31/2008 and ending on 1/1/2010. Non renewal shall not be an event of default. This bond shall not cover any losses incurred by Oblige or others subsequent to bond expiration. The obligation incurred during bond period shall only apply to revenue earned during bond period.

The foregoing is subject to the condition that no suit or action shall be commenced hereunder after the expiration date of one year following the date on which Principal ceased work on said contract or the date on which final payment under the contract falls due, or the date on which goods or services were received by the Oblige, which ever occurs first. The Surety shall have no obligations to claimants who do not have a direct contract with the Principal.

This bond duration is for a specific twelve month period and non-renewal shall not be an event of default. Any procurement expenses or costs are excluded under this bond.

This bond is null and void unless signed by the Principal and Surety.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this 24th day of December, 2008 the name and corporate seal of each corporate party being affixed hereto and these presents duly signed by its undersigned representatives, pursuant to authority of its governing body.

ATTEST:

ATTEST:

Sterling Golf Management, Inc
Principal

By

United Casualty and Surety Insurance Company

By

Todd S. Carrigan
Title: Attorney-in-Fact



UNITED CASUALTY AND SURETY INSURANCE COMPANY
BOSTON, MASSACHUSETTS

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That UNITED CASUALTY AND SURETY INSURANCE COMPANY, a corporation of the State of Massachusetts, does hereby make, constitute and appoint

Todd S. Carrigan of Boston, Massachusetts

its true and lawful Attorney-in-Fact, with full power and authority, for and on behalf of the Company as surety, to execute and deliver and affix the seal of the Company thereto, if a seal is required, bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof, as follows:

Any and all bonds, undertakings, recognizances, consents of surety or other written obligations in the nature thereof

and to bind UNITED CASUALTY AND SURETY INSURANCE COMPANY, thereby, and all of the acts of said Attorney-in-Fact pursuant to these presents, are hereby ratified and confirmed.

This power of attorney is signed and sealed by facsimile under and by authority of the following Resolutions adopted by the Board of Directors of UNITED CASUALTY AND SURETY INSURANCE COMPANY at a meeting duly called and held on the 1st day of July, 1993 which Resolutions are now in full force and effect:

Resolved that the President, Treasurer, or Secretary be and they are hereby authorized and empowered to appoint Attorneys-in-Fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected Officers of the Company in their own proper persons.

This power of attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of UNITED CASUALTY AND SURETY INSURANCE COMPANY, at a meeting duly called and held on the 1st day of July, 1993:

That the signature of any officer authorized by Resolutions of this Board and the Company seal may be affixed by facsimile to any power of attorney or special power of attorney or certification of either given for the execution of any bond, undertaking, recognizance or other written obligation in the nature thereof; such signature and seal, when so used being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

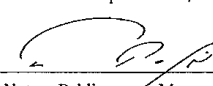
IN WITNESS WHEREOF, UNITED CASUALTY AND SURETY INSURANCE COMPANY has caused these presents to be signed by its proper officer and its corporate seal to be hereunto affixed this 28th day of May 2008.

UNITED CASUALTY AND SURETY INSURANCE COMPANY


Timothy M. Carrigan, Treasurer

State of Massachusetts, County of Suffolk ss.:

On this 28th day of May in the year 2008 before me personally came Timothy M. Carrigan to me known, who, being by me duly sworn, did depose and say that he resides in the State of Massachusetts; that he is the Treasurer of UNITED CASUALTY AND SURETY INSURANCE COMPANY, the corporation described herein which executed the above instrument; that he signed his name thereto by the above quoted authority; that he knows the seal of said corporation; that said seal affixed to said instrument is such corporate seal, and that it was so affixed by authority of his office under the by-laws of said corporation.


Thomas P. Carrigan, Jr., Notary Public

My commission expires December 1, 2011

I, Timothy M. Carrigan, Treasurer of UNITED CASUALTY AND SURETY INSURANCE COMPANY, certify that the foregoing power of attorney, and the above quoted Resolutions of the Board of Directors of July 1, 1993 have not been abridged or revoked and are now in full force and effect.

Signed and sealed at Boston, Massachusetts, this 24th day of December 20 08


Timothy M. Carrigan, Treasurer

No:	189667	Bond No: 5869RW1208
Principal:	Sterling Golf Management, Inc. 212 Kenrick Street Newton, MA 02458	
Obligee:	City of Newton 70 Crescent Street Newton, MA 02458	
Effective Date:	12/31/2008	
Contract Amount:	\$250,000.00	
Bond Amount:	\$250,000.00	

ACORD <small>2011</small> CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 1/2/2009
PRODUCER (800)258-1776 FAX: (603)882-1843 The Minuteman Group 90 Main Street P.O. Box 487 Nashua NH 03061-0487		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED Sterling Golf Management, Inc. 212 Kenrick Street Newton MA 02458		INSURERS AFFORDING COVERAGE INSURER A: Netherlands Insurance INSURER B: Peerless INSURER C: INSURER D: INSURER E:
		NAIC # 24171 3

COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR/ADDITIONAL TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	CBP9929421	1/1/2009	1/1/2010	EACH OCCURRENCE	\$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)				\$ 300,000	
					MED EXP (Any one person)	\$ 15,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COM/PROP AGG	\$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	BA9927324	1/1/2009	1/1/2010	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	BODILY INJURY (Per person)				\$	
	BODILY INJURY (Per accident)				\$	
	PROPERTY DAMAGE (Per accident)				\$	
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN EA ACC	\$
					AUTO ONLY: AGG	\$
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE	CU9922525	1/1/2009	1/1/2010	EACH OCCURRENCE	\$ 5,000,000
	AGGREGATE				\$ 5,000,000	
						\$
						\$
						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC9924824	1/1/2009	1/1/2010	<input checked="" type="checkbox"/> WC STATUS <input type="checkbox"/> OTH: CR	
	E.L. EACH ACCIDENT				\$ 500,000	
	E.L. DISEASE - EA EMPLOYEE				\$ 500,000	
	E.L. DISEASE - POLICY LIMIT				\$ 500,000	
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
City of Newton named as an Additional Insured. Pesticide Liability limit - \$1,000,000

CERTIFICATE HOLDER

City of Newton - City Hall
Attn: Re Cappoli, Chief Procurement Officer
1000 Commonwealth Ave.
Newton, MA 02459-1449

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Matthew Serodio

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

EXHIBIT III

NEWTON COMMONWEALTH GOLF COURSE

Sterling Golf Management

A. STATEMENT OF REVENUES:

<u>Revenue</u>	<u>2011 Projected</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
Green Fees	\$781,000	\$825,764	\$794,450	\$765,239	\$712,101	\$703,539
Season Tickets	\$60,000	\$65,900	\$77,263	\$80,302	\$81,675	\$59,139
Cart Rentals	\$183,000	\$190,026	\$184,873	\$178,631	\$170,111	\$166,752
Snack Bar	\$79,000	\$85,220	\$85,513	\$71,184	\$76,131	\$76,207
Total	\$1,103,000	\$1,166,910	\$1,141,459	\$1,095,356	\$1,040,018	\$1,005,691

<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
685,000	749,300	732,342	714,621	705,572	843,715
68,250	65,350	63,450	53,300	57,500	50,275
155,000	151,585	157,352	140,608	134,824	165,940
85,100	91,404	99,627	96,905	91,237	102,600
993,350	1,057,639	1,052,771	1,005,434	989,133	1,162,530

ROUNDS:

<u>Rounds</u>	<u>2011 Projected</u>	<u>2010</u>	<u>2009</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>
	37,434	37,868	37,335	35,102	33,433	34,270

<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>
34,094	36,784	36,235	35,671	36,247	42,845

**NEWTON
COMMONWEALTH
GOLF COURSE
617-630-1971**

212 Kenrick Street, Newton, MA 02458

RATES - 2012

MONDAY – THURSDAY (until 5:00 PM)

Non-Residents - \$30.00

Newton Residents - \$23.00

Juniors* - \$14.00 • Seniors* - \$18.00

FRIDAY – SUNDAY & HOLIDAYS

Non-Residents – Until 4:00 PM - \$37.00

• After 4:00 PM - \$30.00

Newton Residents – Until 4:00 PM - \$30.00

• After 4:00 PM - \$25.00

Juniors – After 3:00 PM - \$20.00

Seniors – Fridays Only Before 9:00 AM - \$22.00

EARLY BIRD SPECIAL - MONDAY - FRIDAY

9 Holes Only - Tee off prior to 7:00 AM

Non-Residents - \$19.00

Newton Residents - \$15.00

9 HOLE - MONDAY – FRIDAY 7:00 AM - 4:59 PM

Mon - Thur Non-Resident - \$24 Fri - Non-Resident - \$31

Mon - Thur Resident - \$20 Fri - Resident - \$26

TWILIGHT - EVERYDAY (after 5:00 PM)

Non-Residents - \$19.00

Newton Residents - \$15.00

Juniors* - \$14.00 • Seniors* - \$18.00

SUNSET - EVERYDAY (1 hour before sunset)

Adults - \$10.00 • Juniors* - \$ 5.00

COLLEGE RATE* (Monday – Friday) - \$22**

RIDING CART**

18 Holes - \$16.00pp • 9 Holes - \$10.00pp

PULL CART

18 Holes - \$7.00 • 9 Holes - \$5.00

CLUB RENTAL

18 Holes - \$20.00 • 9 Holes - \$14.00

Premium Clubs - \$35

* Juniors (under 18) • Seniors (over 62)

** Must be 18 yrs old with valid driver's license

*** Must have current College Student I.D.

Reserve a Tee Time Online at – www.sterlinggolf.com

EXHIBIT IV

MINIMUM TECHNICAL SPECIFICATIONS FOR GOLF COURSE MAINTENANCE

I. General Requirements.

The work includes maintenance of grass on **greens** (including **putting greens and** perimeter slopes), tees (including **practice** tees), fairways, roughs, sand **traps, and maintenance of shrubs,** trees, and landscaping around clubhouse and throughout the entire 18-hole course.

II. Personnel Requirements.

In addition to the minimum staffing required set forth in paragraph 20 of RFP #15-15, the management firm shall maintain a sufficient number of personnel at all times to accomplish, on schedule, all work under this contract.

III. Equipment, Materials, and Supplies

The management firm will furnish all labor, equipment, parts, chemicals, materials, and supplies needed to provide the maintenance specified in this Exhibit I, as well as the equipment more specifically identified in Exhibit II of RFP #15-15. The Foundation will supply storage areas and office space as currently exists at the Golf Course for the management firm's use.

IV. Detailed Standards

Greens, Practice Putting Greens, and Aprons

Mowing - mowed daily at a maximum height of 3/16" varying mowing directions each time greens are mowed.

Change cup locations daily during active season and at least four (4) times weekly during the off-season.

Repair ball marks, divots, or any other damaged turf on all greens and practice putting green at least five (5) times weekly.

Core, aerate all greens and practice putting greens a minimum of two (2) times each season. This will be done with "Ryan Greensaire" or approved equal which places holes on two-inch centers and a minimum of two inches deep.

All greens shall be aerified a minimum of three (3) times a year by high pressure water injection aerification using a "Toro Hydroject 3000" or similar. This must be done during June, July and October each year.

Top dress all greens and practice putting greens after aerification and additionally as needed to maintain a smooth putting surface. Atop dressing application rate of 0.6 to 1.0 cubic yards of material per 1,000 square feet is typically required. A representative sample of the existing soil material of the greens shall be submitted to a reputable physical soil testing lab to determine the specific characteristics of the dressing material to be used. Top dressing should occur every three

to four weeks during the summer growing season.

Light vertical mowing of all greens and practice putting greens shall be performed every seven to ten days from May to September to control mat and thatch build-up and stimulate optimum turf growth. Heavy vertical cutting should be done twice in conjunction with the first and second core aerification operations to control thatch accumulation.

Spiking of all greens and practice greens shall be performed as needed between aerifications to maintain proper water infiltration.

Fertilization - the greens fertilization program should be based on bi-annual spring and fall chemical soil analysis results to determine specific requirements. Only fertilizer specifically formulated for putting greens shall be applied.

Fungicide - all greens and practice greens shall have appropriate fungicide applications at a preventative rate at intervals not to exceed 21 days and additional applications at a curative rate may be required to control fungus activity and prevent damage to the turf. This will be especially important prior to and just following overseeding.

Pre-emergent chemicals - (such as *Balan*, *Dacthal*, etc.) shall be used in the appropriate amounts and appropriate times to prevent intrusion into the greens of weeds difficult to eradicate such as poa annua, goosegrass, crabgrass, etc.

Weed Control - all greens and practice greens shall be maintained free of foreign grasses and weeds, even if it is necessary to remove them by hand.

Insecticide - all greens and practice greens shall be treated on a preventative basis not to exceed six-week intervals, and additionally on a curative basis as may be required to control insect activity and prevent damage to the turf.

All Areas Used for Tee Surface

Mowing - all tees shall be mowed to a height ranging from 1/2 to 3/4 inches no less than three (3) times per week at an interval not to exceed three (3) days.

Top Dressing - all tees shall be top dressed a minimum of three (3) times each season with weekly divot repair.

Seeding - all tee areas shall be overseeded each spring and fall at a rate of not less than 5 pounds per 1,000 square feet.

Set-Up - tee markers shall be moved daily during active season and at least four (4) times weekly during the off-season. Litter containers shall be emptied as necessary. Ball washers shall be filled as needed and supplied with clean towels.

Weed Control - tees shall be kept weed-free to an extent of at least 90% of the area by the proper application of approved herbicides.

Aerification - all tees shall be core aerified a minimum of three (3) times each season.

Fertilization - all tees shall be fertilized at a minimum rate of 8 to 10 pounds of nitrogen per 1,000 square feet on an annual basis. Bi-annual (spring and fall) soil analysis shall be utilized to determine other specific nutritional requirements.

Fairways and Roughs - All Areas of Play Except Greens, Tees, and Natural Growth Areas

Mowing - all fairways shall be mowed three times a week at a height of 1/2" during the active growing season and as needed for the balance of the year.

Aerification - all fairways and roughs shall be aerified a minimum of once per season. Aerification holes shall not exceed a spacing of three inches on center or be of a diameter of less than 1/2". Minimum penetration of two inches. For any areas through the golf course where there is heavy traffic and where patterns are very concentrated, such as exist and entrance points of the cart paths, two or three supplemental core aerifications should be conducted annually during the growing season.

Fertilization - all fairways and roughs shall be fertilized at a rate of four to five pounds of nitrogen per 1,000 square feet on an annual basis. Soil analysis results (spring and fall) shall be used to determine other nutritional requirements.

Weed Control - fairways shall be kept weed-free to an extent of at least 90 percent of the area by the proper application of approved herbicides.

Roughs - All rough areas are to be maintained at a maximum height of two inches and a minimum of one (1) mowing per week.

Landscape Areas - All Areas Within Perimeter of Operations Planted with Ornamental Plants, Not Intended for Golf Play, and Having a Definable Border

Clean-Up - all areas shall be maintained free of trash and debris such as paper, drinking cans, bottles, fallen limbs, and leaves.

Weed Control - all areas shall be maintained free of weeds or grass whether by mechanical or chemical means.

Trimming - the plant material (trees, shrubbery, and ground covering) shall be trimmed as necessary for protection from wind, insect damage, and for appearance.

Replacement - the plant material (trees, sod, shrubbery, annual plant material, and ground covering) shall be replaced as necessary to maintain a pleasing display to the public.

Trees - All Trees Within the Perimeter of Operations

Staking - all trees shall be staked as necessary to protect and establish sufficient size to stand unassisted.

Pruning - all trees shall be pruned as necessary for protection from wind and pests as well as for appearance.

Irrigation - all trees shall be watered to provide adequate moisture for proper growth.

Mowing - mechanical removal of grass shall not be accomplished within one foot of the tree trunks.

Removal and Replacement - all damaged trees shall be removed and replaced by the management firm within fourteen (14) days unless determined differently by the Foundation.

Irrigation - All Equipment Required to Irrigate All Areas of the Golf Course

Repair or replace all heads, valves, controllers, wiring, and pipe as needed to maintain the proper operation of the entire golf course irrigation system (including greens, tees, fairways, planters, flower beds, etc.) on an on-going basis.

The irrigation pumps shall be serviced and maintained on a regular basis as provided in the manufacturer's maintenance manual, but not less than twice per year. The management firm will provide the

Foundation a copy of service reports for its records. In the event replacement of pumps for delivery of irrigation water becomes necessary, such replacement in excess of the \$2,500.00 contingency fund will be at the expense of the Foundation.

Fences - All Wood Fence or Chain-link Fence Within the Boundaries of the Golf Course

Repair all broken or damaged fencing on a weekly basis.

Replace all fences as needed within thirty (30) calendar days of determined replacement need as determined by the Foundation.

Repair or replace all fences, gates, and locking devices needed for protection of the golf course or equipment immediately.

Edging

All edging of sidewalks, patios, and cart paths must be done on a weekly basis. Edging of trees, sprinklers, valve boxes, meter boxes, backflow preventer, etc., shall be done as needed to ensure that there is no obstruction of play from growth around these items.

Sand Traps

All sand traps shall be edged as necessary to maintain a neat lip, raked daily, and filled with fresh sand as needed to maintain an eight-inch depth on slopes and a six-inch depth in the bottom. Replacement sand will be specified and approved by the Foundation.

Color Areas

Various planting areas throughout the course shall be regularly cultivated, weeded, and pruned on a regular basis, with at least two (2) replanting programs for annuals scheduled each year.

Construction and Remodeling

Any change in the physical characteristics of any area of the golf course such as addition or removal of sand traps, addition or removal of any hazards (water, trees, or native vegetation), regarding involving movement of soil exceeding 20 cubic yards in any single area, or the modification of any portion of the golf course or the buildings must be approved by the Foundation.

Programs

All programs for fertilization, chemicals, and top dressing formulations must be reviewed and approved by the Foundation prior to the application or use on the golf course

Trash and Debris Removal

Trash and debris removal will be at the management firm's expense. The management firm will take special care to ensure minimal problems for refuse odors, insects, etc.

Damages

Management firm shall be responsible for drainage problems which may develop as a result of an act of nature. Repairs will be made to bare spots created through play and any wet spots which might be created. Damage reports including pictures should be made on any problems which might develop.

Other

Management firm will be responsible for aquatic maintenance of all lakes in a safe and sanitary manner and in good appearance, mowing roughs and all unimproved areas as needed, spraying fairways, roughs, and fence lines for weed control, and soil testing for adequate analysis at least once per year.

Golf Course Supplies, Services, Islands, etc.

Management firm shall be responsible for supplying, repair or replacement of all flags and poles, ball washers, tee markers, benches, signs, water coolers, etc., as needed. If there is a question as to the condition of an item, the Foundation's opinion shall prevail.

END OF SECTION

EXHIBIT V

A. MAINTENANCE EQUIPMENT REQUIRED ON-SITE AT ALL TIMES

The following maintenance equipment, or equivalent, **no older than two years**, is required on-site at all times:

1. Two (2) Triplex Greens Master, 3150, 3100 or equal.
2. Three (3) Toro 1000 Hand Tee Mowers or equal.
3. Three (3) Trans Pro 100 Utility Trailers or equal.
4. Two (2) Toro 5200D Fairway Mowers or equal.
5. Seven (7) Toro 1100 Utility Vehicles or equal.
6. One (1) Toro 3200 Workman Utility Vehicle with Bed, or equal.
7. One (1) Pequea Spinner Topdresser or equal
8. One (1) Procore 648 Aerator or equal.
9. One (1) Sandpro 2020Bunker Machine or equal.
10. One (1) Toro 4500D Grounds Master Rough Machine or equal.
11. One (1) Sidewinder 3500D Grounds Master or equal.
12. One (1) 328D Grounds Master or equal.
13. One (1) 5700D 300 Gallon Sprayer or equal.
14. One (1) Toro 600 Large Debris Blower or equal.
15. One (1) 57 HP Kabota Tractor w/ loader or equal.
16. One (1) Tow Behind Rough Deck Mower or equal.
17. One (1) Lely Spreader or equal.
18. Two (2) Little Wonder 9 hp push blowers or equal.
19. Two (2) 7001 Redmax Backpack blowers or equal.
20. Four (4) Honda push mowers or equal.
21. Four (4) Echo String Trimmers or equal.
22. Two (2) Fertilizer Spreaders.
23. One (1) 3" Tarsh Pump
24. Two (2) Spare fairway mower reels

- 25. Two (2) Spare greens mower reels
- 26. One (1) Trans Pro 100 Utility Trailer, or equal
- 27. One (1) Toro 1000 Hand Tee Mower
- 28. One (1) Set of Greens rollers for Triplex or equal
- 29. Two (2) Flex 21 Hand Greens Mowers or equal

NOTE: Brand names are given only as examples. Equipment which is equal to the brand identified in quality and functionality is acceptable. Proposers must identify in their response the equipment which they intend to provide in compliance with this requirement, specifying such equipment's manufacturer and model.

NOTE: NO EQUIPMENT OR VEHICLES OTHER THAN THAT REQUIRED FOR ON-SITE USE AT NEWTON COMMONWEALTH GOLF COURSE MAY BE STORED ON THE PREMISES.

END OF SECTION

EXHIBIT V

B. FOUNDATION OWNED AND PROVIDED EQUIPMENT

The Foundation owns and provides the following equipment at the golf course:

1. One (1) Weather Station WS-1000 Rainwise -- Serial #-7727
2. One (1) Fire Cabinet-SEC-CUR-ALL Safety Storage Cabinet
3. One (1) Air Compressor Campbell Hausfeld - Serial #040793L 984236
4. One (1) stainless steel exhaust hood
5. One (1) Ansul 8102 fire extinguisher system - Serial #R353004
6. One (1) LP 500P Diesel Fuel Storage Tank Hoover – Serial #L680042
7. One Securall chemical storage building – Model B1600
8. Seventy-six (76) Nesting Ovation Chairs, Model #179, Eighteen (18) Tables, Model 311 Square Maple Edge.
9. One (1) 72” Country Club Gas Grill – Model A4CC.
10. Hobart LX30H dishwasher – Serial #23-1002-611
11. Star Broiler – Model 6015CBA S/N – 6L150740
12. True Double Door Freezer – Model T-49F S/N – 1-2183054
13. True Double Door Refrigerator – Model T-49 S/N – 1-2144744
14. Four (4) 36 Station Buckner Irrigation Controllers - Model #20/51.
Serial #'s 53862-93-02, 51236-93-02, 59405-94-04, 59404-94-04
15. One (1) Motorola P50+ radio irrigation controller w/keypad, Serial # 519FUG7463.
16. One (1) Thor Guard Lightening Detector, Serial # 210050/2

Attachment - A

Newton Commonwealth Golf Course *Price Bid Proposal*

*This form must be completed and placed in a sealed envelope
marked:*

RFP #15-15 Price Proposal - Golf Course Operation Services

Name of Firm or Individual Submitting Bid: _____

Address: _____

Telephone: _____

Above Bidder Proposes to Pay to the Newton Commonwealth Foundation, Inc. (the golf course's management committee) _____ % (_____ Percent) of the gross revenues from the **operation of the golf course**.

Above Bidder Proposes to Pay to the Newton Commonwealth Foundation, Inc. _____ % (_____ Percent) of the gross revenues from the operation of the **Snack Bar / Food Service**.

Gross revenues are defined as all monies collected by the Contractor through operation of the Golf Course, **excluding** monies received from transactions at the pro shop. In the event that the percentage as bid is less than \$250,000 annually, the bidder agrees to pay no less than \$250,000 annually.

For any play during the Off-Season (12/1 to 3/31) (see VI. Instruction to Bidders, section 5.A.) Management Firm may retain 100 percent of revenues up to the amount of \$5000.00 in each month. Manager shall pay to the Foundation fifty percent of revenues over the amount of \$5000.00 in each month.

Signature of Bidder: _____

Name of Bidder: _____

Address of Bidder: _____

City / State / Zip: _____

Telephone / Fax / E-mail: _____

Attachment B

Newton Commonwealth Golf Course *Technical Proposal*

*This form and accompanying materials must be completed and placed in a sealed envelope marked
Technical Proposal - Golf Course Operation Services*

Proposer acknowledges Addendum ____, ____, ____, ____,

Name of Bidder: _____

Address: _____

Telephone/FAX: _____

Signature of Duly Authorized Representative of Bidder:

Title: _____ Date: _____

END OF SECTION

A. TECHNICAL PROPOSAL - MINIMUM CRITERIA

Any proposer submitting a proposal must satisfy the Minimum Criteria at Section VII above in order for its proposal to be considered. In partial satisfaction of this requirement, proposers must supply information showing the following:

1. Five (5) years' experience or its equivalent, by the management firm, or its principal, managing a regulation 18-hole public or private golf course.

List Name of Course, Years Managed, Location and Reference to contact. Supply resume.

2. Management firm must have two (2) or more golf courses under its management.

List name and phone number of each golf course under management and reference.

3. Five (5) years' experience or its equivalent, by the individual who will be the full time on-site manager of the Newton Commonwealth Golf Course in managing a regulation 18-hole public golf course.

List name of proposed On-Site Manager, Course Managed, Location, Reference.

4. Five (5) years' experience or its equivalent, at a regulation 18-hole public golf course by the individual who will be the full time on-site Pro Shop Manager of the Newton Commonwealth Golf Course.

List name of proposed On-Site Pro Shop Manager, Golf Course Pro Shop Managed, Location, Reference.

5. Five years as a *Class A* member of the Professional Golfers Association of America by the person who will be the resident professional at the Golf Course.

Identify Golf Professional and Describe Experience & PGA Certification.

6. Five years' experience or its equivalent, by the individual who will be the full-time on-site Course Superintendent in managing the greens keeping duties of a regulation 18-hole public golf course. Such Superintendent must be a GCSAA *Class A* superintendent, who has successfully completed two (2) years of an accredited agronomy school, or equivalent.

7. Can you provide the required performance bond or equivalent security?

Yes: _____ No: _____

If to be provided by bonding company, please identify surety.

8. Can you provide the required insurance?

Yes: _____ No: _____

9. Can you provide _____ ing levels and equipment _____

Yes: _____ No: _____

Attach list of personnel, including names if currently ki _____ d staffing positions, and list of
equipment req _____ on-site at all times per se _____ bit II.

B. TECHNICAL PROPOSAL - COMPARATIVE EVALUATION CRITERIA AND STANDARDS

Proposers must submit responses to the Evaluation Criteria and Standards set forth in Section VIII above. The responses should clearly identify which evaluative criterion is being addressed. Please use additional pages as necessary to complete your proposal. DO NOT INCLUDE ANY PRICE INFORMATION IN YOUR RESPONSE AND BE SURE TO INCLUDE THESE ADDITIONAL PAGES IN THE ENVELOPE MARKED "TECHNICAL PROPOSAL GOLF COURSE OPERATION SERVICES."

LEGISLATION ENACTED BY THE COMMONWEALTH OF MASSACHUSETTS, EFFECTIVE JULY 1, 1983, REQUIRES THAT THE ATTESTATION BELOW BE SIGNED AND RETURNED WITH ATTACHMENT B, TECHNICAL PROPOSAL.

ATTESTATION

Pursuant to MG c. 62C, § 49A, the undersigned acting on behalf of the Contractor, certifies under the penalties of perjury that, to the best of the undersign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.*

**Signature of Individual
or Corporate Contractor (Mandatory)

*** Contractor's Social Security Number
(Voluntary) or Federal Identification Number

By: _____
Corporate Officer
(Mandatory, if applicable)

Date: _____

* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of GL c. 62C, § 49A.

Massachusetts General Laws, Chapter 30B, §10, requires that each bidder must certify as follows:

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this paragraph, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

(Name of person signing bid or proposal) *Please sign do not
print or type*****

(Name of business)

CONTRACT FORMS

The awarded bidder will be required to complete and submit documents substantially similar in form to the following.

These forms may need to be modified on account of changed circumstances, and are provided for informational purposes only.

**MANAGEMENT CONTRACT
FOR THE
NEWTON COMMONWEALTH GOLF COURSE**

This Contract is made on January 1, 2012, by and between _____ and the Newton Commonwealth Foundation, Inc., a public instrumentality of the City of Newton and a Massachusetts charitable corporation organized under Chapter 180 of the Massachusetts General Laws (hereinafter the "Foundation"), with a principal place of business c/o the City of Newton Parks and Recreation Department, 70 Crescent Street, Newton, Massachusetts;

WHEREAS, the Foundation was created to assume the responsibilities of the City of Newton (hereinafter "City") with regard to the management and maintenance of the golf course property known as Newton Commonwealth Golf Course (hereinafter the "Golf Course"); and

WHEREAS, the City owns the Golf Course and has executed an Agreement with the Foundation to provide management of the Golf Course through March 2, 2014; and

WHEREAS, the Foundation and the City issued a Request for Proposals numbered 12-28 for management and maintenance of the Golf Course pursuant to G.L. c.30B; and

WHEREAS, following evaluation of both the technical and price proposals for management and maintenance of the Golf Course, the City found the proposal submitted by _____ to be most advantageous to the City and awarded the contract to _____;

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties agree as follows:

1. Scope

_____ (hereinafter the "Management Firm") shall be responsible for the operation, management and maintenance of the Golf Course in accordance with the terms and conditions herein provided, the Request for Proposal to Provide Professional Services (hereinafter "RFP") and the Technical and Price proposals (the "Response") submitted by the Management Firm in response to the RFP. The RFP and the Response are attached and incorporated into this Agreement as Exhibit A and together with this Agreement form the Contract between the parties. The terms and provisions of this Agreement shall take precedent over any inconsistent terms or provisions in Exhibits A

2. Term

The term of this Contract shall commence on January 1, 2015, and shall terminate on December 31, 2018, unless otherwise terminated as herein provided.

3. Consideration; Management Fee

(a) The Management Firm shall pay to the Foundation annually a sum representing _____% of gross revenue received from the operation of the golf course. Gross revenue shall include all revenues received by the Management Firm, except revenue from pro shop sales, pull cart and golf club rentals, tournament fees, income earned from professional tournaments, lessons given by the staff, and outside income earned by any golf professional on the staff. The percentage stated above shall not, however, apply to gross revenue collected for the operation of the Snack Bar food service and functions. Instead the operator agrees to pay to the Foundation a fixed percentage of _____% of the gross revenues for Snack Bar food service and functions.

(a)(i) For any play during the Off-Season (12/1 to 3/31) (see Paragraph 5 below) Management Firm may retain 100 percent of revenues s up to the amount of \$5000.00 in each month. Manager shall pay to the Foundation fifty percent of revenues s over the amount of \$5000.00 in each month.

(b) Management Firm shall remit monies due the Foundation on a monthly basis. Each monthly payment shall consist of _____% of the gross revenue, as defined above, and _____% of the Snack Bar revenue collected during that month. Monies shall be payable on or before the 15th day of the month following the end of the month for which payment is made.

(c) In no event shall the total amount paid by the Management Firm to the Foundation in any calendar year during the term of this Contract be less than \$250,000.00. Should the total of monthly payments in any year be less than \$250,000.00, the Management Firm shall make an additional payment to the Foundation prior to December 31st of any year of this Contract to bring the total amount paid to the Foundation in that year to \$250,000.00.

(d) Payments are due on the dates above specified. Interest for late payments shall be at the rate of 1-1/2% per month.

(e) The Management Firm shall submit to the Foundation at such intervals and in such form as the Foundation may determine financial reports to verify the revenue collected by the Management Firm.

4. Course Fees and Charges

Fees for pre-paid green fees, green fees, riding cart rentals, club rentals, and food and beverage must be approved by the Foundation. The Foundation shall establish all fees for the forthcoming season prior to April 1 for each year of the agreement. If the Foundation institutes any increases to the fees in effect at the execution of this Agreement, the Management Firm shall be required to pay the Foundation sixty percent (60%) of the increased revenue it collects related to such fee increases.

5. Seasons for Golf Course

The primary operating period for the Golf Course shall be daily, daylight to dusk, seven (7) days per week, weather permitting, beginning April 1st and ending November 30th, each year of the Contract. The period from April 1st through November 30th shall be considered "In Season". The Golf Course may be operated from December 1 through March 31 (considered the "Off Season"), provided use of the Golf Course does not damage the greens, tees, or other turf areas. Changes to the operating schedule shall only be made with the written approval of the Foundation. However, when weather conditions render the Golf Course unusable for golfing, the Management Firm shall permit to occur and facilitate such recreational activities as shall be determined by the Foundation and which may be set out in rules and regulations to be published by the Foundation.

The Foundation reserves the right to undertake or provide for a more active recreational use of the Golf Course. The Foundation shall be responsible for the payment of any additional insurance premiums necessitated by the Foundation's sanction of such more active recreational use. The Management Firm shall have the specific authority, subject to review by the Foundation herein granted, to ensure that the Golf Course is not damaged by any said recreational use.

6. Operation of the Golf Course

(a) The Management Firm shall operate the premises as a public golf course during the term of this Contract, and shall keep and maintain the Golf Course, the club house, the parking areas, the golf carts, all greens, grounds and shrubbery, and all furnishings, fixtures and property used in connection therewith, in good condition throughout such term, such operation and maintenance to be accomplished with energy, fidelity, diligence and to golf course management standards as determined by the New England Golf Course Superintendent's Association Handbook, giving said Golf Course at all times the benefit of the Management Firm's special knowledge and experience, and employing such special skills as may be required. The Management Firm shall not use the premises for any other enterprise, nor shall the Management Firm use or allow to be used the premises for the conduct of any business other than Newton Commonwealth Golf Course business. The Management Firm shall not use the premises for storage of equipment not solely intended for use on the premises.

(b) The Management Firm represents that, _____, a principal in the firm, will serve as the on-site Manager, and that _____ satisfies all requirements for the on-site manager identified in RFP #15-15; the Foundation hereby approves of _____ as Manager. The Management Firm, and specifically _____, agrees not to accept any other work or engage in any other business activity that could prevent him from devoting his full efforts to the Golf Course during the months of April through November, without the prior written consent of the Foundation.

(c) All rules, regulations and policies relating to the operation of the Golf Course shall be determined by the Foundation following consultation with and/or recommendation by the Management Firm. The Management Firm shall abide by and enforce said rules and regulations. If the Management Firm desires to change any rules, regulations or policies or any fees or charges charged at the Golf Course, it shall first submit a written request to the Foundation, with reasons attached. No change in fees or charges or in the rules, regulations or policies shall be instituted by the Management Firm until the Foundation has approved the charge in writing. Food and beverage charges shall also be subject to approval by the Foundation.

(d) In its operation and management of the Golf Course, the Management Firm shall be subject to, but not responsible for, the enforcement of any Conservation Restrictions of record which may apply to this property.

(e) The Foundation shall have the right to enter upon the Golf Course for the purpose of making such inspections as it deems necessary. If the Foundation determines that the Management Firm has failed to maintain any portion of the Golf Course to the standards set forth in this Contract, the Foundation shall have the right, in its discretion and after notice to the Management Firm, to make such improvements as are necessary to return the Golf Course to its proper condition. The Foundation shall have the right to recoup the cost of any such action from the Performance Bond posted by the Management Firm as a condition of this Contract.

6. Inner Club

The Newton Commonwealth Inner Club is an independent group with its own Board of Directors. They operate a USGA handicap system and tournaments throughout the season. Approximately 10 tournaments are held at 8:00 a.m. on Saturdays or Sundays. The Management Firm has the right to approve the requested tournament schedule before each season. It is the intent of the Foundation for the Inner Club to continue to operate independently with no revenues being derived by the Management Firm for their operation.

7. Season Ticket Holders

There are currently no more than sixty (60) season ticket holders, who receive unlimited golf and a three day advance tee time beyond the general public for an annual payment. The number of season ticket holders is number capped at sixty and will not increase. Any member on the Board of the Foundation does have the right to purchase a season ticket for him/herself at any time. Any season tickets not renewed will be filled from the waiting list by Newton residents only. Season tickets will be good only between April 1 and November 30.

8. Neighborhood Relations

The Golf Course shall be operated at all times to ensure good relations with the surrounding neighborhood. The Manager shall be responsible for receiving and responding to any complaints or problems the residents surrounding the Golf Course or patrons have regarding the Course's operation. The Manager shall at all times be courteous to residents of the neighborhoods surrounding the Golf Course and patrons, and shall be guided by the Foundation with regard to the resolution of complaints.

9. Signs

The Management Firm shall not place any sign or advertisement upon any property of the City or upon any vehicle used by the firm directly for the concession under this Contract without written approval by the Foundation.

10. Maintenance

(a) Management Firm will accept all properties, facilities, and equipment "as is" in their presently existing condition. Management Firm shall, at its own expense, make all repairs necessary to maintain City-owned equipment, buildings, and structures, and has total responsibility for building maintenance to include, but not limited to, repair and replacement all the respective City-owned or Foundation-owned golf course properties, fixtures, plantings, furniture and related equipment and the heating, utility, and plumbing systems. It is acknowledged by the Management Firm that Exhibit ~~IV~~ of RFP #01-16 sets forth standards for the maintenance, upkeep and repair of the golf course (greens, fairways, bunkers, rough, tees, irrigation, etc.), clubhouse, pro shop, and snack bar which are hereby incorporated as part of this Management Contract. Exhibit ~~IV~~ is not all inclusive and other standards as may be set forth in the RFP and/or the Management Contract are equally part of the contract. Management Firm will not make any alterations, additions, or improvements to the golf course and facilities without the prior consent of the Foundation and the City of Newton. All

alterations, additions, and improvements, whether temporary or permanent in character, shall at all times be deemed to be the property of the City and shall remain upon the premises at the termination of the agreement. Management firm will not be responsible for major structural repairs to roofs, exterior walls, heating, air-conditioning, or foundations when the cost of any such repair exceeds two thousand five hundred dollars (\$2,500.00). The management firm shall provide and pay for, at a minimum, the maintenance set forth in Exhibit ~~IV~~ included in RFP #15-15.

(b) The Management Firm shall keep the clubhouse access road and parking lot free from snow at its expense.

(c) The Management Firm shall provide the Foundation with a monthly management report in a format approved by the Foundation that shall report on maintenance of greens, tees, fairways, roughs, building maintenance, levels of irrigation, fertilization, weed control, and other maintenance. Management reports may be required on a more frequent basis as determined by the Foundation and the City.

11. Utilities/Expenses

All utility expenses such as water, sewer, electricity, gas, waste disposal, telephone, cable television service, etc., which are or may be required to operate the golf course, will be borne by the management firm, including relocation of utilities, permits, connection fees, etc. The golf course has its own water source, connected to its irrigation system. The management firm will be responsible for any electricity associated with operating the pumps for this system. The irrigation system can also draw on City supplied water when necessary. When using this system, the operator will be required to pay the water and sewer charges to the City of Newton.

12. Equipment

(a) The Management Firm shall provide and make available all the personal property and equipment which is peculiar to and needed by the Golf Course for its operation and maintenance in full accordance with RFP #15-15 and this contract; no City-owned or Foundation-owned vehicles or equipment shall be available for use by the Management Firm except as specifically set forth in the RFP. At a minimum, the Management Firm shall be required to provide and keep on site or otherwise make available as needed the equipment set forth in its Response to RFP #15-15. No equipment or vehicles other than those required for on-site use at the golf course may be stored on the premises.

(b) In addition to required maintenance equipment, the Management Firm shall furnish at least sixty five (65) power golf carts, new or in "like new" condition, subject to approval by the Foundation, five (5) of which must be electrical for staff use in early mornings to minimize disturbing the residents in the areas surrounding the Golf Course. Thirty (30) of the non-staff golf carts so furnished shall be no older than four (4) years. The remaining thirty (30) non-staff golf carts shall be less than one (1) year old. All golf carts must be serviced at least weekly by an independent maintenance company hired by the Management Firm for such purpose, and acceptable to the Foundation. The Management Firm shall provide the Foundation with a copy of the maintenance contract with the independent maintenance company, which contract shall also be subject to the approval of the Foundation. The Foundation shall have the right to order the Management Firm to stop using and replace any golf cart it deems dangerous, unserviceable or not in keeping with the character of the Golf Course. No golf carts other than those required for on-site use at the golf course may be stored on the premises.

(c) Within ten (10) days of the date of this Agreement, the Management Firm shall provide written evidence to the Foundation that it owns or leases all the equipment required in paragraph (a) above, and the required golf carts and that such equipment/golf carts will be available at the Golf Course site by March 1, 2009. All required equipment must be new or in "like new" condition and capable of reliably performing the required maintenance. The Management Firm shall be responsible for replacing any required equipment/golf carts which fail to perform reliably during the term of this Contract.

13. Capital Improvements

(a) The Foundation has established an ongoing program of golf course and building improvements. Additional improvements are anticipated in the future. As has been the practice in the past, future improvements will be funded by monies paid to the Foundation by the management firm. As required by the Agreement the Foundation annually prepares a five year plan that itemizes the proposed improvements to be made by the Foundation in the coming years.

(b) The Management Firm acknowledges that it does not have any claim against the Foundation, its agents, or contractors for interference in business or damages for interruption of services or interference in the operation of the golf course, pro shop, or food and beverage service as a result of any improvements made by the Foundation. The Foundation agrees to use its best efforts to minimize such interruptions or interference in business without waiving its right to make

improvements to the golf course or its buildings. The Management Firm will be required to assist the Foundation in getting contractors and multiple quotes for any projects for which it requests assistance. The Management Firm will also be responsible as the Clerk of Works to oversee the quality of work being performed in the best interest of the Foundation.

(c) The Management Firm shall perform the routine and extraordinary maintenance to the golf course and structures described in the section entitled Course Improvements of its Response to RFP #15-15.

14. Alterations

(a) The Management Firm agrees not to make any material and/or structural alterations, changes and/or additions to the Golf Course without prior written consent of the Foundation.

(b) Title to all structural improvements on the premises shall remain in the City upon completion thereof and shall be left in place upon termination of this Contract. Title to trade fixtures, fixtures, equipment, and other personal property initially installed or procured by the Management Firm, including replacements thereof, which were not paid for by the Foundation, shall remain in the Management Firm.

15. Books and Records

The Management Firm shall keep the books of accounts and records of all operations and establish a system of bookkeeping and accounts in a manner considered to be good accounting practice according to the American Institute of Certified Public Accountants and satisfactory to the Foundation and shall permit inspection of said books and records by the Foundation as often as deemed necessary in the opinion of the Foundation. Upon request by the Foundation, the Management Firm shall also provide monthly financial reports on the operation of the Golf Course, in a form satisfactory to the Foundation. The Management Firm shall submit at the end of each year a certified, audited annual report, or as required by the Foundation, a profit and loss statement of operations under the terms of the contractual agreement, in a form considered to be good accounting practice according to the American Institute of Certified Public Accounts and satisfactory to the Foundation.

16. Insurance

During the term of this Contract, the Management Firm shall maintain in full force and effect at its own cost and expense the following minimum insurance coverage:

- (a) Commercial General Liability insurance with not less than the following limits:

General aggregate	\$5,000,000
Products - completed operation aggregate	\$2,000,000
Personal and advertising - injury	\$2,000,000
Each occurrence	\$1,000,000
Fire damage	\$100,000
Medical expense	\$5,000

Coverage provided under the commercial general liability policy shall apply exclusively to the operations provided under the Golf Course Management Agreement to be entered into by the successful proposer.

- (b) Workers compensation insurance shall be required in accordance with the Laws of the Commonwealth of Massachusetts.

- (c) Automobile insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person \$1,000,000 per accident
Property damage	\$500,000 per accident

- (d) Fire insurance shall be in an amount equal to the replacement cost of the clubhouse, maintenance building, and other structures.

- (e) Pesticide liability shall be provided separately, or as a part of the General Liability Coverage, in an amount not less than \$1,000,000.

- (f) Underground storage tank liability shall be provided separately, or as part of the General Liability Coverage in an amount not less than \$1,000,000.

The City, and the Foundation shall be named as additional insureds on all policies obtained by the Management Firm and certificates of insurance shall be annually furnished to the City and the Foundation by the Management Firm.

All policies shall be obtained from companies licensed to conduct business in the Commonwealth of Massachusetts. Companies providing insurance coverage shall be required to have nothing less than an "A" rating or better by the A.M. Best Company of Aldrich, New Jersey.

Insurance coverage in amount and form shall not be deemed acceptable until approved by the City Solicitor of the City of Newton.

The City and the Foundation reserve the right to require increased insurance coverage at any time during the term of this Contract if the present statutory cap on tort liability of municipalities is increased during the term of this Contract.

17. General Provisions

- (a) Except as otherwise provided in this Contract, the Management Firm shall have the exclusive right to operate, manage, and receive all income from the operation of the Golf Course, golf carts, pro-shop and snack bar.
- (b) In the conduct of the Golf Course and related operations, the Management Firm shall comply with all federal, state, and local laws and ordinances as the same are or may be applicable to the Golf Course or any facilities located thereon.
- (c) **Compliance with Procurement Regulations.** The Management Firm will when procuring goods or services related to the maintenance of the golf course or City owned buildings, equipment or property comply with applicable provisions of M.G.L. Ch. 30B, M.G.L. Ch. 30, Sec. 39M and M.G.L. Ch. 149, Sec. 44A-L. Such compliance will subject to audit and oversight by the City of Newton Chief Procurement Officer. Any procurement requiring publicly advertised bids or proposals will be submitted to the City of Newton Purchasing Department which will advertise and receive the bids or proposals. The award of any publicly bid contract is subject to the approval of the Mayor of the City of Newton.
- (d) The Management Firm shall be solely responsible for the procuring and filing of all licenses required for the operation of the Golf Course, golf carts, pro-shop and snack bar facilities.
- (e) The Management Firm understands and agrees that in the performance of its obligations under this Contract, the Management Firm is at all times acting as an independent contractor, that persons employed by the Management Firm shall in no event be considered to be employees of the City or the Foundation, and that the Management Firm shall be responsible for the payment of wages (and the withholding of taxes in connection therewith) and for the provision of any and all employee benefits. The Management Firm shall obtain and pay for Workmen's Compensation insurance, with the provisions and amount of the policy conforming to applicable statutes, covering all employees of the Management Firm.
- (f) The Management Firm shall be in charge of public play on the Golf Course and shall be authorized to enforce applicable ordinances, rules, and regulations for use of the golf course.
- (g) **Assignment.** It is understood and agreed between the parties that the services herein provided for are to be performed by the Management Firm and neither this Contract nor any services, rights or duties contained herein and provided hereunder may be assigned to any other person or party without the express written consent of the Foundation.
- (h) The parties hereto acknowledge that in the event the Agreement between the City of Newton and the Newton Commonwealth Foundation terminates prior to March 2, 2014, and while this contract is in effect, the Management Firm agrees to the full assignment of the Foundation's interest in this Management Agreement to the City of Newton or a party designated by the City in the event the Agreement is not renewed or replaced with a contract between the City and the Foundation.
- (i) **Contributions and Special City Events.** The Management Firm shall annually make charitable contribution of fifteen thousand dollars (\$15,000) in five equal installments to a Newton charitable organization(s) selected by the Mayor of the City of Newton.
- In addition, the City of Newton shall have the right to use the Golf Course for special City events, including golf, for not less than five (5) weekdays, excluding holidays., The City shall have the option for an additional two (2) special event days to be negotiated between the City and the Foundation, each year of the agreement. Special City events shall be at no cost to the City of Newton or to the Foundation.
- (j) The Management Firm shall comply with all requirements of The City of Newton noise ordinance in effect that currently restricts the Management Firm from running motorized equipment before the hours of 7:00 a.m. weekdays and 9:00 a.m. on weekends and holidays and after dusk any day of the week. The Management Firm will be required to comply with any lawful amendments to the current ordinance.

18. Liability and Indemnity

(a) The Management Firm shall save the Foundation and the City harmless from all loss and damage occasioned by the use or escape of water or by the bursting of pipes, as well as from any claim or damage resulting from neglect in not removing snow and ice from the club house, the access road to the club house, or by any nuisance made or suffered on the Golf Course.

(b) The Management Firm agrees, to the extent not expressly prohibited by law, that it shall indemnify and hold harmless the City and the Foundation and their respective officers, agents, servants and employees from all liability for any damage either to persons or property sustained by the Management Firm or by other persons due to the Golf Course or any part thereof or any appurtenances thereof being out of repair or due to the happening of any accident in or about the Golf Course or club house (hereafter jointly referred to as the "premises") or due to any act or neglect of any person occurring on the premises or arising out of performance of the Management Firm's obligations under this Contract. This provision shall apply particularly (but not exclusively) to damage caused by water, snow, frost, steam, sewage, gas, sewer gas or odors or by the bursting or leaking of pipes, faucets and plumbing fixtures, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the causes specifically enumerated above or to some other cause of an entirely different kind. The Management Firm further agrees that all personal property upon the premises shall be at the risk of the Management Firm only, and that neither the City nor the Foundation shall be liable for any damages thereto or theft thereof.

In addition, the Management Firm agrees to defend with counsel approved by the City and the Foundation, save harmless and indemnify the City and the Foundation from all claims of liability for injury, loss, accident or damage to any person or property and from any claims, actions, proceedings, and expenses and costs in connection therewith (including, without limitation, reasonable counsel fees) arising from the omission, fault, willful act, negligence or other misconduct of the Management Firm and persons for whose conduct the Management Firm is legally responsible occurring on the premises or arising out of performance of the Management Firm's obligations under this Contract. In addition, the Management Firm agrees to defend with counsel approved by the City and the Foundation from any claims of liability for injury, loss, accident or damage to any person or property, and from any claims, actions, proceedings and expenses and costs in connection therewith (including, without limitation, reasonable counsel fees), arising from any use made or thing done or occurring on the premises which is not due solely to the omission, fault, willful act, negligence or other misconduct of the City and/or the Foundation or any persons for whose conduct the City and/or the Foundation is legally responsible.

19. Faithful Performance Bond

The Management Firm will, at or before the execution of this Contract, furnish to the City an acceptable corporate surety bond in the penal sum of Two Hundred and Fifty Thousand (\$250,000.00) Dollars or equivalent security, as security for faithful performance and non-negligent performance of this Contract. The bond shall be in force at all times during the Contract.

Should the Management Firm be unable to provide a corporate surety bond, it may substitute the bond with another form of security instrument that is satisfactory in amount and form to the City Solicitor.

20. Equal Opportunity in Hiring

The Management Firm shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin and shall comply with all local, state and federal laws and regulations pertaining to non-discrimination and equal opportunity in the areas of employment, subcontracting and use of City facilities. The Management Firm shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Further, the Management Firm shall, in all solicitations or advertisements for employees, state that all qualified applicants will receive consideration for employment without regard to their race, color, religion, sex or national origin.

21. Termination

(a) In the event the Golf Course is not managed in a manner deemed by the Foundation to be in accordance with this Contract or any of its terms or conditions, or in the event that the Consideration required in Paragraph 3 above is not paid when due, the Foundation shall have the right at any time during said term to cancel this Contract upon forty-five (45) days' notice in writing to the Management Firm setting forth what has been deemed unsatisfactory by a breach of the Contract. In the event the Management Firm fails to cure the default complained of, or matters deemed unsatisfactory, within the time set forth in Paragraph 22 herein, termination of this Contract shall be automatically effective without further notice to the Management Firm. The Foundation may then take possession of the Golf Course, and may take any such other actions and pursue any remedies as provided in law or equity. The Management Firm shall pay any costs and reasonable attorney's fees in connection with any such default. The Foundation shall also be entitled to recoup any loss it suffers by reason of the Management Firm's default from the security provided in Paragraph 19.

(b) In the event that during the term of this Contract any physical or mental incapacity prevents _____ from overseeing the operation of the Golf Course, this Contract may be terminated by the Foundation upon forty-five (45) days' notice in writing to the Management Firm, and the Contract shall automatically terminate without further notice on the 45th day following receipt thereof by the Management Firm. In such event, however, the Management Firm shall not be liable to the Foundation for any additional payments provided for by this Contract. No such notice shall be sent to the Management Firm until the following have occurred: (i) at least 2/3 of the members of the Foundation present at a duly noticed meeting vote that the Contract should be terminated because of the physical or mental capacity of _____ to oversee the operation of the Golf Course; (ii) within thirty (30) days after said vote, the Foundation nominates a medical doctor to evaluate _____, the Management Firm nominates a medical doctor, and the two medical doctors nominate a third medical doctor or, alternatively, the Foundation and the Management Firm agree upon one medical doctor; and (iii) the medical doctor (if only one is appointed) or a majority of the three medical doctors appointed issue a written report concluding that _____ is physically or mentally incapable of continuing to oversee the operation of the Golf Course in the manner required by this Contract.

(c) The Management Firm shall peaceably and immediately give up and surrender to the Foundation the premises and every part thereof at the termination of this Contract for any reason.

22. Default

Each of the following shall be deemed an event of default, for which this Contract may be terminated pursuant to the procedure set forth in the termination section above:

(a) If the Management Firm shall default in the payment of fees or any other sums under this Contract for fifteen (15) days after notice thereof;

(b) If the Management Firm fails to keep in full force and affect all Insurance policies required in Paragraph 16;

(c) If the Management Firm fails to post the security required in Paragraph 19;

(d) If the Management Firm fails to cure a material breach in the performance or observance of any other term, covenant or condition of this Contract within thirty (30) days after notice thereof, or, if such breach is not capable of being completely cured or remedied within said thirty (30) day period, if the Management Firm shall not have diligently commenced curing such default within such thirty (30) day period and shall not thereafter with reasonable diligence and in good faith proceed to remedy or repair such default;

(e) If the Management Firm abandons the premises, or fails to maintain the premises and to keep the premises open to the public for daily use for thirty (30) days after notice thereof;

(f) Thirty (30) days after the filing of, execution or occurrence of: (a) a voluntary or involuntary petition in bankruptcy or for reorganization or for an arrangement by or against the Management Firm; (b) adjudication of the Management Firm as a bankrupt or insolvent or insolvency in any bankruptcy proceeding; (c) a petition or other proceeding by or against the Management Firm for, or in the appointment of, a trustee, receiver, guardian, server or liquidator of the Management Firm with respect to all or substantially all of his property; (d) a petition or other proceeding by or against the Management Firm for its dissolution or liquidation, or the taking of possession of the property of the Management Firm by any

governmental authority in connection with dissolution or liquidation; (e) the taking by any person of the Golf Course property or any portion thereof upon execution, attachment, or other process of law or equity.

23. Non Waiver of Defaults

Waiver by the Foundation of any breach by the Management Firm of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach the same or any other term, covenant or condition.

24. Force Majeure

Neither the Foundation nor the Management Firm shall be deemed in breach of this Contract if it is prevented from performing any of the obligations hereunder by reason of Acts of God, acts of the public enemy, acts of superior governmental authority, strikes or labor disputes, floods, riots, rebellion, sabotage, or any similar other circumstances not within its reasonable control.

25. Liens

The Management Firm shall keep the Golf Course and any improvements thereon free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by the Management Firm, his employees, agents and contractors, and the Management Firm agrees to reimburse the City and the Foundation for any attorney's fees incurred in defense of proceedings to enforce or foreclose such liens.

26. Taxes

Management firm shall be responsible for paying, prior to delinquency, any and all taxes and assessments levied or assessed against the Golf Course in connection with the Golf Course and the management firm's operation thereof. The City of Newton charges a Personal Property Tax for all property owned by the management company. This tax will cover golf cars, equipment, tables, chairs, etc. and is payable quarterly to the City.

27. Notices

Any notice required or permitted to be given under this Contract to either party shall be in writing and shall be sent by registered or certified mail, postage prepaid, or delivered by hand:

(a) If intended for the Foundation, addressed to:

Chairperson
Newton Commonwealth Foundation, Inc.
c/o the Parks and Recreation Department
124 Vernon Street
Newton, Massachusetts 02458

(continued)

With a copy to:

City Solicitor
Newton City Hall
1000 Commonwealth Avenue
Newton Center, MA 02159;

and

(b) If intended for the Management Firm addressed to:

28. Entire Agreement

This Contract constitutes the entire agreement of the parties hereto and may not be altered, amended or modified except by an agreement in writing, signed by all parties hereto and specifically referring to this Contract.

IN WITNESS WHEREOF, the parties hereby executed this Contract under seal as of the date first above written.

Contractor

Newton Commonwealth Foundation

By: _____
Name

By: _____
Steven Meyer, *Chairman*

Print Name: _____

Date: _____

Title: _____

By: _____
Nicholas Read, *Chief Procurement Officer*

Date: _____

Date: _____

Approved as to legal form
and character.

Award made pursuant to G.L. C.30B, sec. 6

Contract Approved

By: _____
Marie Lawlor, *Associate City Solicitor*

By: _____
Mayor or his designee

Date: _____

Date: _____